959

SUPREME COURT OF THE UNITED STATES.

No. 207.

CHARLES H. WHEELER, APP'T,

VS.

RUSSEL SAGE.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF WISCONSIN.

INDEX.

	Original.	Print.
Bill of complaint	1	1
Subpœna	11	6
Return to ditto	12	7
Answer	12	7
Replication	22	12
Exceptions to answer	23	13
Docket entries	26	15
Hearing	28	15
Complainant's testimony.		
Deposition of Alexander Mitchell	29	16
Interrogatories to Alanson Sweet	43	24
Deposition of "	56	30
Memoranda made by Alanson Sweet, annexed to deposition	79	41
Deposition of D. C. Reed	94	49
" Hiram Slocum	105	55
Evidence of records	112	58
Letter of A. Mitchell to N. J. Emmons	125	66
Deposition of George F. Place	126	67
Account of Sage & Co., against Sage, Wheeler & Slocum	134	73
" Sage against Wheeler	134	73
Letters of Sage against Wheeler	134	73
Defendant's testimony.		
Deposition of Lyndsay Ward	144	78
" Alexander Mitchell	148	80
Articles of copartnership of Slocum, Sage & Wheeler	160	86
Agreement between Slocum, Sage & Wheeler	162	87

	Original.	Print.
Letters—Mitchell to Sage	164	89
" Slocum to Sage	165	90
" Sage to Finch & Lynde	169	92
" Sage to Wheeler & Co	170	92
" Wheeler to Sage	193	105
List of judgments against Alanson Sweet	220	122
Deposition of Alanson Cary	221	123
Answer of Sweet and others in suit of Danforth and others	226	125
Motions as to testimony	238	131
Stipulations as to testimony, &c	240	132
Objections as to testimony	241	133
Decree	242	134
Prayer for appeal	242	134
Appeal bond	242	134
Certificate of clerk	245	135
Citation	246	135

1 District court of the United States for the district of Wisconsin.

UNITED STATES OF AMERICA,
District of Wisconsin, ss:

At a special term of the district court of the United States of America for the district of Wisconsin, begun and held, according to law, at the city of Milwaukee, in said district of Wisconsin, on the first Monday (being the second day) of September, A. D. 1861. Present: the honorable Andrew G. Miller, judge of said court, presiding; Darius C. Jackson, marshal; John M. Miller, clerk.

Among other, the following proceedings were had, to wit:

CHARLES H. WHEELER, complainant,
vs.
RUSSELL SAGE, defendant. } In equity.

Bill of complaint.

Be it remembered that heretofore, to wit, on the fourth day of May, A. D. 1860, came the said complainant, Charles H. Wheeler, by his solicitor, Mr. Lynde, and filed his bill of complaint against Russell Sage, as follows:

To the judge of the district court of the United States for the district of Wisconsin, in equity:

Charles H. Wheeler, of the city of Milwaukee, and a citizen of the State of Wisconsin, brings this his bill against Russell Sage, of Troy, and a citizen of the State of New York.

And thereupon your orator complains and says that, on the 12th day of September, 1851, your orator entered into an equal copartnership with this defendant and one Hiram Slocum for the purpose of conducting a general produce business at the city of Troy, in the State of New York; that said parties entered upon the prosecution of said business, and continued it as partners, for the term of three years from the said 12th day of September, 1851.

2 And your orator further shows that, on the 12th day of September, 1849, one Alanson Sweet, of the said city of Milwaukee, in said State of Wisconsin, executed and delivered to one John W. Bates and the said Russel Sage a bond conditioned for the payment of sixteen thousand dollars with interest; and, at the same time, the said Alanson Sweet and Emily, his wife, executed and delivered to the said Bates and Sage a mortgage upon certain real estate therein described, situated in said city of Milwaukee, conditioned for the payment of said sum of sixteen thousand dollars with interest, according to the condition of said bond, which said mortgage was duly acknowledged and recorded, as your orator is informed and believes.

And your orator further shows that the said mortgaged premises were composed of a number of lots in said city of Milwaukee upon

which was an extensive and valuable warehouse, and that the mortgaged property, at the time of the execution of said mortgage, was of the value of at least the sum of fifty thousand dollars.

And your orator further shows that the said John W. Bates, by an instrument in writing, under seal, bearing date May 1st, 1850, and acknowledged May 15, 1850, and by him delivered, did sell, assign, and set over to the said Russel Sage the undivided half of said mortgage, and all the interest therein, and in the debt thereby secured of the said John W. Bates.

And your orator further shows that the said Hiram Slocum, on or about the month of September, 1851, purchased from the said Russel Sage an undivided one-half of the said bond and mortgage, and of the interest of the said Russel Sage therein, and of the debt secured thereby. And your orator further shows that, in the month of , 1853, as your orator believes, your orator purchased from the said Russel Sage and Hiram Slocum an undivided one-third of the said bond and mortgage, and of the debt secured thereby, and in the said mortgaged premises, and in the quitclaim deed hereinafter set forth; and that thereupon your orator received from the said Russel Sage a contract or paper, stating the interest of your orator in the said bond and mortgage and deed; and that thereupon your orator became the equitable and true owner of one-third of said bond and mortgage and the debt secured thereby.

3 And your orator further shows, upon information and belief, that said mortgage was the first lien upon the said premises, with the exception of a small portion thereof; and that subsequent thereto, and prior to September, 1851, various judgments had been obtained against the said Alanson Sweet, which were a lien upon said mortgaged premises subsequent to said mortgage, to the amount of about thirty or forty thousand dollars. And your orator further shows that, from the time of the purchase of one-half of the said mortgage by the said Slocum until the 16th day of November, 1855, the said Russell Sage had the principle management of said mortgage and debt, and was entrusted with the control thereof, and with the direction of all the negotiations and proceedings, and pursued for the enforcement of said mortgage, and the security and collection of said demand; and that, after your orator became so as aforesaid interested in said mortgage and debt, the same was treated as a partnership adventure, and was carried with the partnership accounts.

And your orator further shows that, on the second day of September, 1851, the said Alanson Sweet executed a quitclaim deed to the said Russel Sage and the said Hiram Slocum of the said mortgaged premises, which said deed was acknowledged Sept. 3d, 1851, and recorded Sept. 4, 1851; that the said deed, as your orator is informed and believes, was delivered to the said Russel Sage, who, at the same time, in the name of said Sage and Slocum, executed and delivered to the said Alanson Sweet an instrument in writing, giving him the right of redeeming the said premises, upon the terms therein expressed, at any time within two years; but your orator is ignorant of the precise contents thereof, and cannot now fully state the same;

4 but your orator states, upon information and belief, that the

same operated as a defeasance to said quitclaim deed, and converted the same into an equitable mortgage, and that the conditions of such defeasance were never performed. And your orator further shows, upon information and belief, that a suit to foreclose the said mortgage was thereafter commenced in the circuit court of Milwaukee county, in the State of Wisconsin, on the 22d day of October, 1854, and in which suit a decree was made on the 16th day of November, 1855, establishing the amount of the said mortgage debt, and directing a sale of said mortgaged premises to satisfy the same, to the record and proceedings of which your orator prays leave to refer. And your orator further shows, upon information and belief, that, subsequent to said mortgage, and prior to the commencement of said foreclosure proceedings, a large amount of judgment, being liens upon said mortgaged premises, had been obtained in the courts in the State of Wisconsin, against the said Alanson Sweet, severally or with others; and your orator, together with the said Sage and the said Slocum, deemed it desirable to obtain the control of said judgments; that the said Alanson Sweet had then become insolvent; that, after the commencement of said foreclosure proceedings, and before the sale hereinafter mentioned, the said Russel Sage, in substance, informed the said Hiram Slocum and your orator that, for the sum of ten thousand dollars, he could procure Alexander Mitchell, of Milwaukee aforesaid, to purchase in the said judgments resting upon said mortgaged premises, and to secure to these plaintiffs thereby, and
5 with their said mortgage and deed, a perfect title to said mortgaged premises; that thereupon it was agreed so to do, and the said Sage was authorized by your orator and the said Slocum to effect that arrangement, and was to charge to your orator on the said firm books his share of the ten shousand dollars, there then being more than that amount standing to the credit of your orator thereupon; and a like amount was to be charged to the said Slocum, he then also having, as your orator believes, credit upon the firm books to more than the amount so to be charged to his account.

And your orator further states, upon like information and belief, that thereafter, and before the sale hereinafter mentioned, the said Russel Sage did make an agreement with the said Alexander Mitchell, by which, upon the consideration of ten thousand, the said Alexander Mitchell agreed to purchase said judgments for the benefit of your orator and said Sage and Slocum, or of the said Russel Sage, or that the said Russel Sage made some agreement with the said Mitchell in regard to those judgments, the particulars of which are unknown to your orator, but which, as your orator is informed and believes, and therefore charges, was directed towards and intended for the procurement of said judgment in some form to perfect or aid the title of these parties to said mortgaged premises, or to facilitate their proceedings to obtain a perfect title thereto under their said mortgage or deed, or one of them; and your orator further shows, upon information and belief, that under some agreement with the said Russel Sage, individually or jointly, with the said Slocum and your orator, or one
6 of them, the said Mitchell did purchase the said judgments, or some of them, but to what extent or under what particular

arrangement your orator is unable to state. And your orator further shows, upon information and belief, that afterwards, and before the sale hereinafter mentioned, the said Russell Sage made an agreement by parol with the said Mitchell in substance and to the effect that he, the said Mitchell, should purchase the said mortgaged premises upon the sale thereof to be had under said decree, and that said Russell Sage should be entitled to one-third interest in the purchase or the proceeds thereof, or be interested in the purchase to the extent of one-third, but your orator is unable to state more particularly the terms of said arrangement. And your orator further shows, upon information and belief, that afterwards, and on or about the 20th day of February, 1856, the said mortgaged premises were sold at public auction under and by virtue of said decree, and that the said Alexander Mitchell became the purchaser thereof for about the sum of $17,000; and that immediately, or soon thereafter, the said Russel Sage entered into a written agreement by which an equal undivided one their interest in said mortgaged premises, or in the proceeds thereof, was secured to the said Russel Sage, but your orator is ignorant of and cannot with more certainty state the contents of said agreement.

And your orator further avers and states that the said Russel Sage was at Milwaukee, aforesaid, on or about the 23d day of October, and the 20th day of November, 1855, and was also at said city at the time of said mortgage sale; that upon each and every of said occasions he went to said city upon the business of said firm, connected with
7 said mortgage, and the debt thereby secured, and to guard and secure the rights and interests of the said firm with reference thereto. That your orator upon those occasions, and in all the transactions relative to said mortgage debt and premises, entrusted the management and control thereof, so far as he was concerned, to the skill and integrity of the said Russell Sage, and fully confided in his statements and representations concerning the same. That the said Russell Sage charged to the said firm his expenses in going to and from Milwaukee upon the said occasions, and assumed and undertook upon each of them, with the consent and approbation of your orator, to represent him in regard to said mortgage, and said debt, and said foreclosure proceedings, and said mortgage, and in regard to each and every of them. And your orator further shows that the said Russell Sage never communicated to him the arrangement so as aforesaid made with the said Alexander Mitchell in regard to the sale and purchase of the said mortgaged premises, and the interest of the said Russell Sage therein. That on the day of the said sale the said Russell Sage stated to your orator, in substance, that the arrangement with the said Mitchell relative to the purchase of said judgments, upon consideration of receiving $10,000, could not be carried out, and that all your orator could do would be to take the money received from said sale; and thereupon the said Russell Sage furnished to your orator a statement in regard to the mortgage debt and the interest of each of the parties therein, showing that to be the sum of eight thousand dollars and twenty cents, and then represented to this plaintiff that such sum was the true amount to which this plaintiff was entitled under the
8 said mortgage and said sale; and your orator being ignorant

that said Sage had made any arrangement with said Mitchell to retain any interest in said mortgaged property, or in the proceeds thereof, settled with the said Russell Sage upon the basis of the last aforesaid statement, and surrendered to the said Sage the contract or paper stating the interest of your orator in said bond and mortgage.

And your orator further shows that your orator and the said Hiram Slocum were anxious to obtain title to said mortgaged premises if the same could be secured for the amount of said mortgage debt and $10,000 in addition; that the said Russell Sage knew of that desire and participated therein, and, for the purpose of accomplishing it, undertook, in behalf of the said Slocum and your orator as well as himself, to negotiate and arrange with the said Alex. Mitchell, and generally to superintend the arrangements and proceedings concerning said mortgage and its enforcement. And your orator further shows, upon information and belief, that since said mortgage sale portions of said mortgaged premises have been sold to the amount of one hundred and five thousand dollars, and that said sales have produced or will produce that sum, and that the unsold portions of said property are worth about the sum of $27,000; and that the said Russell Sage, by virtue of an understanding had with the said Alexander Mitchell before said mortgage sale, and a written agreement made between them, and substantially in conformity to a parol agreement or understanding prior to such sale, has secured to himself and is entitled to claim and receive one-third of the aforesaid proceeds of said mortgaged premises. And your orator further shows that he never knew or was informed until long after said mortgage sale that the said Russell Sage had any interest whatever in said mortgaged property, or the proceeds thereof, after said sale, or that any agreement or understanding whatever existed between the said Russell Sage and the said Alexander Mitchell, by which any interest in said property or its avails was secured to the said Russell Sage. That your orator afterwards was informed by the said Sage that he had no interest whatever in said property after said mortgage sale, and that he merely left his money in the property and received a commission therefore. That your orator has since, on discovery, as he believes, the true relation of the said Russell Sage to said property, insisted upon his right to the one-third of the one-third interest therein, or in the proceeds thereof, secured by the said Sage, and has repeatedly demanded of him a recognition of that right and an accounting in regard thereto, both of which has been uniformly refused by the said Sage.

Your orator further shows that he has been informed by the said defendant that he retained an interest in the property at the time of the sale, but claiming a perfect right so to do, and that your orator had no claims on him, your orator therefore prays that by the decree of this court it may be determined that your orator is of right entitled to an equal undivided third of any interest in the said mortgaged premises, or the proceeds thereof, which the said Russell Sage has obtained under any agreement, arrangement, or understanding with the said Alexander Mitchell; and that in regard to one equal undivided third part thereof, he, the said Russell Sage,

may be adjudged to be trustee for your orator, and that the said Russell Sage may be decreed to account to and with your orator concerning the same, according to the course and practice of this court; and that your orator may have such further or other relief as may be agreeable to equity. May it please this court to grant to your orator a writ of subpœna commanding the said Russell Sage, by a certain day and under a certain penalty, to be and appear before this honorable court, and then and there to answer the premises, and further to stand to and abide such order and decree therein as shall be agreeable to equity and good conscience.

CHAS. H. WHEELER.

WM. P. LYNDE, *Solicitor.*
M. H. CARPENTER, *of Counsel.*

DISTRICT OF WISCONSIN, *ss:*

On this 4th day of May, 1860, personally appeared before me the above-named complainant, who, being by me duly sworn, did depose and say that he has heard read the foregoing bill of complaint, and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters which are stated on information and belief, and as to those matters he believes it to be true.

J. M. MILLER,
Clerk U. S. Dist. Court, Wisconsin.

Whereupon a subpœna issued as follows:

11 UNITED STATES OF AMERICA,
District of Wisconsin ss:

The President of the United States of America to Russell Sage, greeting:

[SEAL.]

You are hereby commanded that you personally appear before the judge of the district court of the United States of America for the district of Wisconsin, in our court of chancery, in and for the district aforesaid, on the first Monday of June next ensuing, at Milwaukee, to answer to a bill of complaint exhibited against you in our said court by Charles H. Wheeler.

And to do further, and receive what our said court shall have considered in that behalf; and this you are not to omit under the penalty which may ensue.

This process of subpœna is directed to the marshal of this district, who is hereby commanded to serve the same upon the said Russell Sage, if to be found in his district, and due return thereof make.

Witness the honorable Andrew G. Miller, judge of the district court of the United States for the district of Wisconsin, at the city of Milwaukee, in the said district, this fourth day of May, in the year of our Lord one thousand eight hundred and sixty, and of our independence the eighty-fourth.

J. M. MILLER, *Clerk,*
By EDWARD KURTZ, *Deputy.*

WILLIAM P. LYNDE, *Solicitor.*

It is ordered by our said court that the said Russell Sage, the defendant aforesaid, do enter his appearance in this suit, in the clerk's office, on or before the day and time at which this subpœna is returnable, as aforesaid; otherwise the bill filed may be taken as confessed.

12 *Return.*

And afterwards, and on or before the return day of said subpœna, came the marshal, and returned the same, with his return endorsed thereon, as follows: "Served on the within-named Russell Sage, by delivering a copy of this subpœna personally to him this 4th day of May, 1860. J. H. Lewis, marshal, by F. H. Erny, deputy." Fees $2 46.

And afterwards, to wit, on the fifteenth day of May, A. D. 1860, came the defendant, by his solicitors, Messrs Emmons, Van Dyke & Hamilton, and filed his appearance, as follows:

Appearance.

District court of the United States for the district of Wisconsin.

CHARLES H. WHEELER
vs.
RUSSELL SAGE. } In equity.

Please enter our appearance for the defendant in the above entitled suit.

EMMONS, VAN DYKE & HAMILTON,
Defendant's Solicitors.

To J. M. MILLER,
Clerk U. S. Dist. Court, Dist't of Wis.

And afterwards, to wit, on the second day of July, A. D. 1860, came the defendant, by solicitors, Emmons, Van Dyke & Hamilton, and filed his answer as follows:

Answer.

The district court of the United States for the district of Wisconsin.
In equity.

The answer of Russell Sage to the bill of complaint of Charles H. Wheeler, complainant, against the said Russell Sage, defendant:

This defendant, now and at all times saving and reserving unto himself all advantage and benefit of exception to the many errors and imperfections in the said bill of complaint contained for
13 answer thereunto, or unto so much thereof as he is advised it is material or necessary for him to make answer unto, answering, says:

He admits that he was a copartner with the complainants and Hiram Slocum, and that said parties continued as partners for the space of three years, but he denies that the partnership business was to be transacted at Troy; but, on the contrary, says that Milwaukee, Wisconsin, was the general place of business.

This defendant, further answering, admits the execution and delivery by Alanson Sweet to John W. Bates and this defendant of

the bond mentioned in the complaint, and of the mortgage by said Sweet and wife, to secure said bond; but he denies, upon his belief, that the mortgaged premises were, of the date of such mortgage, worth the sum of fifty thousand dollars. He further admits the said Bates assigned and transferred to defendant his, said Bates's, interest in such bond and mortgage, and, also, that in September, 1851, said Slocum purchased from this defendant the one-half of said mortgage debts; and that afterwards, in the month of September, 1853, said complainant purchased from said Slocum and this defendant the one-third part of said mortgage debt. He further admits that said mortgage was the first lien upon the mortgaged premises, with the exception of a portion of said premises; and further, that prior to September, 1851, various judgments has been obtained against the said
14 Alanson Sweet, which were liens upon said mortgaged premises; but he says, upon his information and belief, that such judgments amounted to near, if not upwards, the sum of one hundred thousand dollars.

And this defendant, further answering, says that he was not entrusted with the control of said mortgage debt; that he had no exclusive management or direction in regard thereto; and, to his recollection or belief, never did do or assume to do in the premises anything without the assent of said complainants. The defendant, further answering, admits that in the month of September, 1851, Alanson Sweet made a quitclaim deed to this defendant, and that defendant executed an instrument in writing to said Sweet, giving him, upon certain conditions, the right of redeeming said mortgaged premises, and defendant believes that such conditions were never performed, and he says they were not performed otherwise than as hereinafter explained.

And this defendant, further answering, says he admits that a suit to foreclose said mortgage has commenced in the circuit court of Milwaukee county, as alledged in the bill of complaint, and that a decree was rendered therein on or about the 16th day of November, 1855, but he denies that such decree established the amount of such mortgage debt otherwise and differently than is in hereinafter stated.

And this defendant, further answering, says that he may have informed the complainants, in substance, that he could arrange with Alexand. Mitchell, of Milwaukee, to purchase judgments against
15 the said Alanson Sweet, and by the expenditure of the same of ten thousand dollars for such purpose, thereby to secure a title to said mortgaged premises; but that if he ever did so inform the complainant, or so state to him, it was the expression of an opinion merely to that effect, and in no sense an assurance that such a thing could be accomplished. But, on the contrary, defendant says that he first gained the idea from the complainant himself that such an arrangement could be made with said Mitchell; acting upon which, he had conversation with said Mitchell on the subject, and being led to believe that such project might be carried out, may have stated by letter or otherwise to complainant that it could or would be done, but he expressly avers that no agreement to such effect, in substance, or any agreement in fact whatever, was made with said Mitchell prior to said decree;

nor was anything done towards accomplishing such agreement but what the complainant himself was consulted about and a party to. And defendant further says that although true it is the complainant and this defendant and the said Slocum did contemplate, with a view to perfecting title to said mortgaged premises, the purchase of judgments against said Sweet; yet he says that such scheme became and by reason of the facts and circumstances hereinafter detailed apparently impracticable, and the same was abandoned. And this defendant further answering, says that all the allegations in the bill of complaint contained concerning the said mortgaged premises, the sale thereof an foreclosure, this defendant connection with and transactions in relation thereto, his agreements with said Mitchell and complainant's pretended interests therein, and for the most part are
16 truly alleged and set forth in the bill of complaint; and he avers that the real truth and facts of the case are as hereinafter narated.

The defendant says that the foreclosnre of the mortgage aforesaid was commenced in the circuit court of Milwaukee county, as hereinbefore admitted. Serious defence was interposed thereto by said Sweet, and by his judgment creditors, and by said Mitchell, who was prosecuting a defence in the name of creditors whose judgments he had, as defendant is informed, purchased. Numerous crop bills were filed, and complicated defensive proceedings instituted in such foreclosure suit, all of which will appear by reference to the records and proceedings in said cause, now remaining in the office of the clerk of the circuit court of Milwaukee county, and to which defendants pray leave to refer, if it may become necessary so to do. In such suit, it was claimed that the sum of thirty thousand dollars and upwards was due upon said mortgage debt; on the other hand, it was alledged by the defendants or some of them to such suit that little or nothing was due thereon. Said Mitchell had become, as defendant was informed and believes, the owner of a large amount of judgments against said Sweet, in virtue of which ownership he was prosecuting a vigorous defence to said foreclosure; in fact, the said Mitchell, as defendant believes, was then the principal if not the sole promoter of the defence to such suit. It was feared by the complainant in this suit, as he expressed himself to this defendant in substance, that such defences would so far prevail as that but a portion of the mortgage debt would be realized. At the time referred to, said Mitchell controlled the defence to said suit. It was then, after considerable negotiation, agreed between this defendant, the complainant, and said Slocum,
17 on the one part, and the said Mitchell on the other, that said mortgage debt should be recognized and allowed upon the basis of allowing the principal of the debt and interest and the disbursements by the defendant in the case and maintainance of the mortgage premises, altogether amounting, after deducting, as was agreed to be done, two thousand dollars per year as the agreed value of the use and occupation of said warehouse premises by complainant Slocum and this defendant, to the sum, or about the sum, of twenty-four thousand dollars. A decree was accordingly entered in said suit, such decree, however, being, for reasons urged by said

Mitchell, and from motives of his own, rendered for the nominal amount claimed in such foreclosure suit, and for about the sum of thirty-three thousand dollars. It was, however, agreed that upon the payment of the said sum of about twenty-four thousand dollars said Mitchell should be entitled to have said decree discharged, or to have said decree assigned and transfered to him at his option. Said Mitchell, however, decided to have a sale of the mortgaged premises under the decree. Defendant believes said Mitchell's motive for desiring a sale was to cut off an alledged invalid claim or title to said premises set up by one Levi Blossom, and which intervened, as defendant is informed and believes, between said mortgage lien and the liens of certain judgments owned by said Mitchell. And defendant further says that in the negotiations with said Mitchell, and which led to the settlement and agreement hereinbefore mentioned, the said complainant participated and was fully advised thereof, and of every fact and circumstance connected therewith, of which this defendant
18 had or has any knowledge, the said complainant himself made up or caused to be made up a statement of accounts which formed the basis of said statement or agreement with said Mitchell; and this defendant denies that there was, prior to the sale of said mortgaged premises, any understanding or agreement whatever, direct or indirect, with said Mitchell, other than that hereinbefore stated, with the addition that the amount agreed upon; that the said sum above twenty-four thousand dollars was to be paid in cash by the said Mitchell at the time of the sale. The defendant further says that in or about the month of September, 1855, this defendant was in the city of Milwaukee. Hiram Slocum was also in said city, as defendant recollects, and believes the complainant also, at which time they all three urged upon said Mitchell to undertake what it had been theretofore suggested he might do to perfect title to said mortgaged premises in said complainant, the said Slocum, and this defendant; the said Mitchell declined, with the knowledge of the complainant. The defendant, further answering, says that a sale under said decree of foreclosure took place in the month of February, 1856, at which sale said Alex. Mitchell became the purchaser of said mortgaged premises for the aggregate sum of about twenty thousand dollars. After such sale the said Mitchell informed this defendant that it was at that time inconvenient for him to raise the said amount of twenty-four thousand dollars, or thereabouts, the amount which had been agreed upon as hereinbefore stated, and he proposed in substance to this defendant that in lieu of the money he would take an interest in said mortgaged premises. After some considerable negotiations between this defendant *and this defend-*
19 *ant* and the said Mitchell, an agreement was entered into between them in substance and to the effect that this defendant should join said Mitchell, and advance and pay one-half of all the sum or sums which might become necessary thereafter to pay or advance in perfecting title to said premises; that said Mitchell might go on, and from time to time lease or make sales of said mortgaged premises, and out of the proceeds to reimburse himself his expenses in the case and maintainance of the property; secondly, to

pay to this defendant said amount of twenty-four thousand dollars; next, to pay Emmons & Van Dyke the sum of twenty-five hundred dollars for services rendered to said Mitchell in and about his interest in the premises; after such payments, whatever remained of property or proceeds, one-third part thereof was to belong to this defendant, and two-thirds thereof to the said Mitchell; and the defendant further says that he made said agreement with said Mitchell in his own behalf, for his own sole benefit and behoof; and he desires that the complainant has, or ever had, or was ever entitled to any interest whatever therein; and he further says that at the time of the sale there was no *subsisting* agreement or understanding other than that said Mitchell should pay said amount agreed upon at the time of sale.

The defendant further says that what he was to receive, under said agreement with said Mitchell, was at that time no more than a fair equivalent and consideration for the delay granted, and the risks which this defendant assumed; and defendant has, to this date, received but about one-half part of said sum of twenty-four thousand dollars.

Defendant further says that since said mortgage sale the
20 premises have greatly depreciated in value, and he fears that they will prove barely sufficient to make him and the said Mitchell whole in the premises.

Defendant, further answering, says that shortly after said sale, and within a few days thereafter, he settled with the complainant and paid him the proportion—his due of the said sum so agreed upon as aforesaid with the said Mitchell.

And this defendant, further answering, says that prior to the said foreclosure sale, this defendant had had extensive monied transactions with said Mitchell, the most intimate, business, social relations existing between them; and defendant has reason to believe, and upon his belief avers, that said Mitchell would not have entered into such agreement, as he did do with this defendant, had any other person than this defendant been interested therein.

And this defendant, further answering, denies that said mortgaged premises are or ever were of the value alledged in the bill of complaint.

And this defendant further denies that a sufficient sum has been realized on sale of said mortgaged premises to pay said sum of twenty-four thousand dollars. He further denies that the complainant was informed by this defendant that he had no interest in said property after said mortgage sale, and that he merely left his money in the property, or of anything in substance like it, or to that effect; and this defendant, upon his information and belief, avers that the said complainant was informed at or about the time thereof of the nature of the agreement between this defendant and the said Mitchell, and that he was so informed at the time when this defendant settled
21 with him, and paid him his proportion of thedecree as aforesaid.

And this defendant, further answering, says that until shortly prior to the commencement of this suit did he ever hear or know that the

complainant claimed or pretended any interest in himself under said agreement between said Mitchell and this defendant; said complainant has never offered, or in anywise manifested a willingness or intention to repay to this defendant what he had received from this defendant, his, the said complainant's, proportion of the decree as aforesaid, or any portion of the expenses occured in the case and maintainance of said property, or to assume and bear any portion of this risk which this defendant assumed under his said agreement with said Mitchell.

Whereof, by reason of the premises, this defendant prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

RUSSELL SAGE.
EMMONS VAN DYKE, & HAMILTON,
Solicitors.

DISTRICT OF WISCONSIN, *ss:*

On this twentieth day of June, A. D. 1860, before me, the undersigned commissioner of the district court of the United States for the district of Wisconsin, personally appeared Russell Sage, who, being by me duly sworn, made oath that he had read the foregoing answer by him subscribed, and that he knew the contents thereof, and that the same was true of his own knowledge, except as to the matters and things therein alledged to be upon his information and
22 belief, and as to such matters he had been informed and verily believes it to be true.

J. P. C. COTTRILL,
U. S. Commissioner, District of Wisconsin.

And afterwards, on the 17th day of July, A. D. 1860, came the said complainant by said solicitors, and filed his replication as follows:

Replication.

U. S. district court, Wisconsin.

CHARLES H. WHEELER
vs.
RUSSELL SAGE. } In chancery.

The replication of Charles H. Wheeler, complainant, to the answer of Russell Sage, defendant:

This repliant, saving and reserving to himself now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereto, says that he will aver, maintain and prove his bill of complaint to be true, certain and sufficient in law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant, without this that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver, maintain,

and prove, as this honorable court shall direct, and humbly prays as in and by his said bill he has already prayed.

FINCHES, LYNDE & MILLER,
Solic. for Complainant.

23 And afterwards, on the 6th day of August, A. D. 1860, came the said complainant by his said solicitors, and filed exceptions to the answer of the defendant, as follows:

Exception to answer.

U. S. district court, district of Wisconsin.—In equity.

CHARLES H. WHEELER,
vs.
RUSSELL SAGE.

Exceptions taken by the said complainant to the insufficient answer of the said defendant, Russell Sage, to the said complainant's said bill of complaint:

1st. For that the said defendant, Russell Sage, hath not, to the best and utmost of his knowledge, remembrance, information and belief, answered and set forth whether, after your orator brought a third of the said mortgage debt, the said mortgage and debt was treated as a partnership matter and carried to the partnership account.

2d. For that the said defendant, Russell Sage, hath not, to the best and utmost of his knowledge, remembrance, information and belief, answered and set forth whether, between the giving of the said mortgage and the foreclosure suit, judgments had been obtained against Sweet, and that your orator, defendant, and Slocum, deemed it best to obtain control of said judgments, and that Sweet was insolvent.

3rd. For that the said defendant, Russell Sage, hath not, to the best and utmost of his knowledge, remembrance, information and belief, answered and set forth whether, after the commencement of said foreclosure suit, and before the sale of the said mortgaged premises, the said Sage did arrange with Alexander Mitchell for ten
24 thousand dollars to buy the said judgments against said Sweet for the benefit of your orator, said defendant, and Slocum, or made some other agreement with him, said Mitchell, in that behalf, and that said Mitchell did buy said judgments, or some of them, under some arrangement.

4th. For that the said defendant, Russell Sage, hath not, to the best and utmost of his knowledge, remembrance, information and belief, answered and set forth whether, before the sale of the said mortgaged premises, the said defendant, Russell Sage, with said Alexander Mitchell by parol, that Mitchell should buy the mortgaged premises at the sale under the said decree, and that said defendant, Sage, should be entitled to a one-third interest in said purchase.

5th. For that the said defendant, Russell Sage, hath not, to the best and utmost of his knowledge, remembrance, information and belief, answered and set forth whether that he, the said Russell Sage, on

the 23d day of October and the 20th day of November, A. D., 1855, and at the sale of the said mortgaged premises, was in Milwaukee upon the business of said firm connected with said mortgage, and that your orator intrusted everything to his, said Sage's, management connected with said mortgage, and that he, said Sage, charged all his traveling expenses to the firm, and never communicated to your orator the said arrangement with said Mitchell, but that on the day of said sale said Sage stated to your orator that the arrangement as to buying the said judgments against said Sweet could not be carried out, and that all your orator could do was to take the money
25 made at the sale, and whether a statement was made up of the interests of the partners in said mortgage and debt, amounting to eight thousand dollars, and that your orator being ignorant of the facts, took the same; and whether your orator and the said Slocum did not wish to obtain the title to said mortgaged premises if it could be done for the mortgage debt and ten thousand dollars in addition, and that he, Sage, knew this and undertook to negotiate the same.

6th. For that the said defendant, Russell Sage, hath not, to the best and utmost of his knowledge, rememberance, information and belief, answered and set forth whether, since the said mortgaged sale, portions of the said mortgaged premises have been sold to the amount of one hundred and five thousand dollars, and that said sale have or will produce that sum; and whether the unsold portions of said property are worth over twenty-seven thousand dollars, and one-third of which, by virtue of the parol agreement, and subsequent written contract between him, said Sage and said Mitchell, he, said Sage, is entitled to.

7th. For that the said defendant, Russell Sage, hath not, to the best and utmost of his knowledge, rememberance, information and belief, answered and set forth whether he, said Sage, informed your orator that he, said Sage, had no interest whatever in said judgements.

8th. For that the said defendant, Russell Sage, hath not, to the best and utmost of his knowledge, rememberance, information and belief, answered and set forth whether, after your orator had found out that there was an arrangement or agreement between him, said Russell Sage, and said Mitchell, and that the mortgaged prem-
26 ises were bid in by said Mitchell under said arrangement, your orator demanded of him, the said Sage, that he, your orator, should be recognized as the owner of one-third of one-third, and so demanded of him, said Sage, an accounting, and which has been by him, said Sage, denied and refused.

In all which particulars the said complainant excepts to the answer of the said defendant, Russell Sage, as imperfect, evasive, and insufficient, and humbly prays that the said defendant, Russell Sage, may be compelled to put in a full and sufficient answer thereto.

FINCHES, LYNDE & MILLER,
Solic. for Complainant.
W. P. LYNDE, *of Counsel.*

Docket entries.

November 14*th*, 1860.—This day came the parties, by their solicitors, and filed their stipulations, that either party may take testimony in this cause on oral interrogations before Winfield Smith, commissioner, at his office in Milwaukee, commencing on the 1st day of December, 1860, at 9 o'clock a. m., and continuing from day to day, to suit convenience of the parties, till testimony all taken, without further notice to either party.

February 15*th*, 1861.—This day came the complainant, by his solicitors, and entered in the order and rule book a rule for a commission to issue to Francis Bloodgad, esq., of Milwaukee, Wisconsin, to take the depositions of Alanson Sweet, and filed interrogatories to be annexed to said commission.

March 5*th*, 1861.—This day came the defendant, by his solicitors, and filed objections to said interrogatories, and also filed cross-
27 interrogatories to be annexed to said commission, subject to such objections, and named Winfield Smith as commissioner on his part.

March 7*th*, 1861.—This day came the complainant, by his solicitors, and filed objections to the defendant's cross-interrogatories.

March 16*th*, 1861.—Commission issued.

April 2*d*, 1861.—Depositions received *received* from Walter S. Carter, esq., and filed.

April 4*th*, 1861.—Depositions received from Francis Bloodgood, esq., and filed.

April 16*th*, 1861.—This day came the defendant, by his counsel, and, on his motion, it is ordered by the court that the time for taking testimony be, and hereby is, extended to the first day of May next.

May 1*st*, 1861.—On motion of defendant's counsel, it is ordered by the judge that the time for taking testimony in this case be, and hereby is, extended to both parties to the first day of June next.

June 3*d*, 1861.—This day came the defendant, by his counsel, and, on his motion and cause shown, it is ordered by the court that the time for taking testimony be, and hereby is, extended on both sides until the first Monday of July next.

June 29, 1861.—This day came the defendant, by his counsel, and, on his motion and cause shown, it is ordered that the time for taking testimony be, and hereby is, extended on both sides until the first Monday of August next.

August 1, 1861.—Depositions received from post office and filed.

August 9, 1861.—Depositions received from James Mitchell and filed.

September 2*d*, 1861.—Depositions received from F. Bloodgood, esq., and filed.

September 4*th*, 1861.—Depositions received from Winfield Smith, esq., and filed.

Hearing.

September 23*d*, 1861.—This day came the parties, by their
28 counsel, Mr. Finch for complainant, and Messrs. Emmons & Brown for defendant, and this cause came on to be heard upon

the pleadings and proofs; and not being concluded, the further hearing was adjourned until to-morrow morning.

September 24, 1861.—This day came the parties, by their counsel, and the hearing of this cause was resumed; and not being concluded, the same was adjourned until to-morrow morning.

September 25*th*, 1861.—This day came the parties, by their counsel, and the hearing of this cause was resumed; and not being concluded, the same was adjourned until the first Monday of October next.

October 7, 1861.—This day came the parties, by their counsel, and by consent, the further hearing of this cause is adjourned until to-morrow morning.

October 8, 1861.—This day came the parties, by their counsel, and the hearing of this cause was resumed; and not being concluded, the same was adjourned until to-morrow morning.

October 9th, 1861.—This day came the parties, by their counsel, and the hearing of this cause was resumed; and not being concluded, the same was adjourned until to-morrow morning.

October 10*th*, 1861—.This day came the parties, by their counsel, and the hearing of this cause was resumed; and being concluded, the court not being sufficiently advised of and concerning the same, took time to consider.

Comp'nt's testimony.

And at the hearing of said cause, the following testimony was read in evidence on the part of complainant:

Deposition of A. Mitchell.

United States district court, district of Wisconsin.

CHARLES H. WHEELER
vs.
RUSSELL SAGE. } In equity.

Deposition of Alexander Mitchell, a witness produced and examined for the complainant, taken by consent before Walter S. Carter, one of the commissioners of said court, on the day of , 1860, at his office in Milwaukee, in said district.

Present: Mr. Carpenter, of counsel for the complainant, and Mr. Emmons and Mr. J. S. Brown, of counsel for the defendant.

Alexander Mitchell, a witness called and examined by the complainant, testified and said:

Question. What is age, and where do you reside?

Answer. My age is forty-two, and I reside in the city of Milwaukee.

Question. Do you know the parties to this suit?

Answer. I do.

Question. How long have you knew Russell Sage?

Answer. I cannot say exactly, but I should think some ten years.

Question. Do you recollect the circumstance of the foreclosure of a mortgage executed by Alanson Sweet and wife to said Sage and one Bates, and the sale of the property under said foreclosure?

Answer. I recollect there was a foreclosure and sale of a mortgage given by Sweet and wife to Sage.

Question. Was their any, and if any, what, verbal arrange-
30 ment between said Sage and yourself, previous to said sale, about the purchase, holding, and subsequent disposition by you of the property covered by said mortgage?

(Objection by Messrs. Emmons & Brown, deft's solic'ts, to the foregoing question, on the ground of irrelevancy, and also that the arrangement in question was in writing.)

Answer. I have no doubt but that the arrangement, which immediately after the sale was reduced to writing, was verbally understood and agreed on between Mr. Sage and myself prior to the sale. That arrangement was that in the event of the property being bid in by me, I should hold such property charged, first, with the payment of the amount of the decree as agreed upon, with ten per cent. interest from the time of the sale; second, certain law expenses, after sufficient had been received to pay the two foregoing items, together with my expenses of executing the trust. Mr. Sage was to have one-third of the remaining property

Question. Have you a copy of the written agreement executed between you and Sage, spoken of above?

Answer. I have

(Exhibit "A," paper so marked, produced, and deposed to by the witness.)

Question. Was there some time an agreement or understanding between you and Sage about purchasing certain judgments against Alanson Sweet; and if so, was it in writing, or was it by parol?

Answer. There was an agreement paper produced, and marked Exhibit "B" in a copy of that agreement.

Question. Did you bid off that mortgaged property in accordance with that verbal agreement of which you have spoken?

Answer. I did.

31 Question. How long after you purchased the premises before the contract between you and Sage, marked Exhibit "A," was executed?

Answer. Within a few days; I cannot recollect definitely how many.

Question. Have you paid over to Mr. Sage all or any part of the money, secured to him by said agreement in writing, from the avails of said property?

Answer. I have paid him about twenty-two thousand dollars, I believe.

Question. Is any portion of that property still undisposed of?

Answer. I think there are three or four lots yet on hand, including some eight or nine acres of marsh land.

Question. What is the value of the land remaining unsold?

Answer. I think the lots are worth a thousand each. The marsh land it is difficult to fix a value to I should not regard it worth over three or four thousand dollars; perhaps not as much.

Question. Have you on hand any securities or evidences of indebtedness for any portions of this property sold by you?

Answer. I have got a mortgage upon which there is a balance of forty thousand dollars due upon the so-called Sweet warehouse, together with the four lots on which it stands; also a mortgage on which there is about seventeen thousand dollars due on account of principal given by the Milwaukee and Beloit railroad upon about twelve acres of marsh land; also six hundred dollars on farm
32 mortgage lands received by me in payment of interest on last-mentioned mortgage. These, I believe, are all the securities, except, perhaps, a thousand dollars' worth of other securities yet on hand.

Question. Have you, or have you had, any money, or other valuable things, except as above stated by you, realized by you from said property?

Answer. I have at present a balance of about six or seven thousand dollars over and above disbursements, taxes, &c., upon the property, although there are taxes which ought to be paid.

Question. Will you state briefly what sales of this property you have made, giving description of property, name of purchaser, and amount for which you sold, as near as you can recollect.

Answer. I sold to Kellogg & Strong the so-called Sweet warehouse, with four lots, for the nominal sum of fifty thousand dollars; I sold to the Milwaukee and Beloit Railroad Company some ten or twelve acres of marsh land for the nominal sum of twenty-five thousand dollars, of which three thousand dollars was in stock of the road, which is now worthless, and five thousand was in Milwaukee city bonds issued to that company, which were sold at forty or forty-five cents on the dollar. I sold to Burrows & Merrill and to E. D. Baker, altogether, I think, four lots for about ten thousand dollars. The foregoing included all the sales that I can now recollect.

Question. Were any judgments purchased in pursuance of the agreement marked "Exhibit B?"

Answer. Judgments have been purchased by me since the
33 execution of that agreement, in pursuance of it. The agreement, I think, was prospective and retrospective; and the amount disbursed by me in purchasing judgments is about twelve thousand dollars.

Question. Do you recollect the foreclosure of a mortgage, given by Sweet and wife to one Delano, and the purchase of the property mortgaged by you at the foreclosure sale?

(Objected to by Mr. Brown, for the defendant, on the ground of irrelevancy, incompetency, and that the question calls for evidence by parol that should be in writing.)

Answer. I did purchase property at the sale in question.

Question. Did you purchase all the property at that sale which was covered by the mortgage?

Answer. I think I did.

Question. Did that sale include a tract of about thirty-eight acres, more or less, in the northeast corner of section five, town. 6, range 21 east, in Milwaukee county?

Answer. I think it did, if that description is correct.

Question. Was there, at or before the purchase by you of the

property at the last-named foreclosure sale, any agreement or understanding, expressed or implied, between you and Alanson Sweet, that you were to hold said land as security for the sum bid by you therefor, or any indebtedness from said Sweet to you, or both, and that said Sweet might redeem said land by paying the same or any other sum or sums, to you.

(Objected to—

1st. Because if such an agreement existed at all, it should
34 have been in writing.

2d. Because it is irrelevant.)

Answer. According to my best recollection, there was no agreement of any kind between Mr. Sweet and myself. I bought the property without any conditions; indeed, I am not aware whether Mr. Sweet knew at the time of my purchasing the property at said sale.

The witness being cross-examined by Mr. Emmons, for the defendant, testified and said:

Question. Are you still confident that there was any agreement between you and Mr. Sage, in regard to the terms upon which you should hold that property, if you became the purchaser of it prior to the sale?

Answer. I am inclined to adhear to what I have already testified. I think there was a verbal understanding. I do not see how it could have been otherwise.

Question. Was the subject-matter of the agreement, a copy of which is marked "Exhibit B," treated of and agreed upon before the sale?

Answer. My impression is, it was.

Question. Had you an interest in that property as a judgment creditor, prior to the foreclosure and subject to the mortgage?

Answer. I had as a judgment creditor.

Question. Was that mortgage, during its foreclosure, defered on your behalf?

Answer. I believe it was.

Question. At the time of that sale, and after the bids for the property which were made by you on your behalf, if Mr. Sage had
35 demanded the ——, wouldn't you have been bound to pay it to him?

(Objections to by Mr. Carpenter, as calling for a legal opinion, and being immaterial.)

Answer. I should. I mean by that, I should have had to do it to protect myself.

Question. Don't you remember that after the sale had taken place, you and Mr. Sage were engaged one or two days in negotiations in regard to that property, and the terms upon which the purchase-money should be defered? And were not the written agreements which have been produced the result of those negotiations?

Answer. I am still of the opinion that the main features of the arrangements were understood before the sale. There were negotiations after the sale, but I think they refered mainly to the fixing of the amount.

Question. Have you a present recollection of an arrangement beore the sale, or is it a mere belief that such was the case?

Answer. Partly from recollection, and partly because, from the nature of the thing, I think it must have been so.

Question. What is the present value of the security or land mortgaged by the Beloit railroad? Or, in other words, what is the value of the mortgage given you by that company?

Answer. It has no value beyond the value of the land, and that, I should say, was not worth over five thousand dollars.

Question. How long was it after you purchased before you sold the wharehouse to Kellogg & Strong?

Answer. I think about a year.

36 Question. What was the cash value of that wharehouse property at the time you purchased it at the foreclosure sale?

Answer. I should say about twenty-five thousand dollars.

Question. In speaking of this balance of six or seven thousand dollars, do you make any deduction or charge for the amounts paid out by you in purchasing judgments against Sweet?

Answer. No. It has nothing to do with it.

Question. Has Mr. Sage ever paid you directly anything on those judgments?

Answer. He has not, except that a balance has been allowed to lie in my hands, as before stated, from the proceeds of the property. That balance has been a fluctuating balance—sometimes more and sometimes less. I do not think it has ever been less than one-half of what I have been out of pocket on account of purchasing judgments.

Question. Can you state about what part of those judgments you purchased before the foreclosure sale, and what part after the sale?

Answer. I had purchased, I think, about twenty thousand dollars of judgments before the sale.

Question. Were the two papers produced, marked "A" and "B," executed simultaneously?

Answer. I think they were.

ALEX. MITCHELL.

DISTRICT OF WISCONSIN, *ss*:

I certify that the foregoing deposition was taken before me, at the time, place, and in the presence of counsel, as therein stated; that the said witness was by me first duly sworn to tell the truth,

37 the whole truth, and nothing but the truth, in said cause; that this deposition, so taken on oath, was by me reduced to writing, and after being by him carefully read over, was by him subscribed in my presence.

Dated Milwaukee.

WALTER S. CARTER,
U. S. Com., Dist. of Wisconsin.

These presents are to make known and declare to all men, that I, Alexander Mitchell, of the city of Milwaukee, am seized of and do hold the following real estate, situate in the fifth ward of the city of Milwaukee, that is to say: lots four, (4,) five, (5,) six, (6,) and seven, (7,) in block fifty-four, (54;) lots eleven, (11,) twelve, (12,) thirteen, (13) and fourteen, (14,) in block thirty-five, (35;) lots three, (3,) five, (5,) and eight, (8,) in block fifty-five, (55;) and lot six, (6,) in fractional

section thirty-three, (33,) township seven, (7,) range twenty-two (22) east; excluding therefrom, however, a strip on the north side of said lot six, (6,) in fractional section thirty-three, (33,) aforesaid, described in a certain instrument of release executed to me by Russell Sage, of Troy, New York, and having date the day of November, A. D. 1855, with heredíments and appurtenances thereunto belonging, upon the trusts and for the uses following, that is to say, excepting that part of said premises excluded as aforesaid: To lease or sell and dispose of all or any part of said premises, at such times and in such manner and upon such terms as to me, the said Alexander
38 Mitchell, may seem meet and proper, and for the best prices which I can obtain, advising with the said Russell Sage, of Troy, New York, from time to time, when practicable, on the subject; and out of the income and proceeds of sales *of sales*, first, to reimburse myself, with interest at ten per centum per annum, all sum or sums paid or expended by me for taxes, insurance, repairs, or other necessary and proper expenditures in the case and maintainance of said property.

Secondly. To pay to the said Russell Sage the full sum of twenty-five thousand one hundred and seventy-two $\frac{58}{100}$ dollars, with interest thereon at the rate of ten per centum per annum from this date. *Thirdly.* To pay to Messrs. Emmons and Vandyke, of Milwaukee, the sum of two thousand five hundred dollars, with interest after six months from this date. After the payment of the sums and moneys aforesaid, whatever portion of said premises may remain or the proceeds, (always excepting that part excluded as aforesaid,) I shall and will hold for the joint benefit and behoof of the said Russel Sage and myself, the said Alexander Mitchell, in the following proportions, that is to say: one-third part thereof for the use, benefit, and behoof of the said Russell Sage, and two-thirds parts thereof for the use, benefit, and behoof of myself, the said Alexander Mitchell. And after the payment of the sums and moneys aforesaid, I will pay to the said Russell Sage his proportion of any proceeds of said sales that may be in my hands, and will, upon request, convey to him, by deed without
39 covenant, the one undivided *undivided* third part of such parcels or portions of said real estate that may then remain unsold.

Witness my hand and seal this twentieth day of February, in the year eighteen hundred and fifty-six.

[SEAL.] (Signed) ALEX. MITCHELL.

In presence of—
(Signed) LYMAN ELMORE.
H. J. EMMONS.

STATE OF WISCONSIN,
Co. of Milwaukee, ss:

On the 20th day of February, A. D. 1856, before me, the undersigned, a notary public for the State aforesaid, formerly appeared Alexander Mitchell, and acknowledged the free and voluntary execution of the deed by him above subscribed, for the uses and purposes therein mentioned.

(Signed) LYMAN ELMORE,
Notary Public, Milwaukee, Wis.

Memorandum of agreement made this twentieth day of February, A. D. 1856, between Russell Sage, of Troy, in the State of New York, and Alex. Mitchell, of the city of Milwaukee, to witness. Whereas the said Alexander Mitchell has heretofore purchased several judgments against Alanson Sweet, of Milwaukee, having paid therefore the sum of six thousand four hundred and forty two dollars and thirty-four cents, as follows: March 8, 1855, to Halbrook, Carter & Co., of Boston, the sum three thousand and forty-five dollars, and as a further consideration to Halbrook, Carter & Co., the further sum of five
40 hundred dollars to their attorneys, Butler and Worthington, of Milwaukee, on the 4th of May, 1855; on the 12th of June, 1855, thirty-four dollars ninety-two cents to Alfred Edwards & Co., of New York; on the 20th of July, 1855, to Vechte & Bergh, of New York, and to Loring, Fiske & Co., of Boston, the sum of twenty-one hundred and twelve dollars and forty-two cents; and on the 29 of October, 1855, to Fairbanks & Company, the sum of seven hundred and fifty dollars: And whereas the parties hereto contemplate purchasing, if possible to do so on reasonable terms, all the outstanding judgments againstsaid Alanson Sweet, the parties hereto to advance for the purpose *the purpose* the necessary means in equal proportions, the said Sage hereby agreeing to pay to said Mitchell one-half of what said Mitchell has already advanced in purchase of such judgments, and to advance one-half the necessary means for future purchases; and further agrees that at any time, on being repaid the sum or sums by him advanced in purchase of such judgment, with interest at ten per centum and a reasonable commission for his trouble in the premises, he will assign his interest in any and all judgments heretofore or hereafter purchased to the said Mitchell. And the said Mitchell on his part agrees to advance one-half of the means necessary to purchase each of the present outstanding judgments against said Sweet, as they may purchase under this agreement.

Dated February 20th, 1856.

(Signed) ALEX. MITCHELL.
" RUSSELL SAGE.

41 UNITED STATES OF AMERICA,
District of Wisconsin, ss:

The President of the United States of America to Francis Bloodgood and Winfield Smith, esquires, of the city of Milwaukee, State of Wisconsin, greeting:

[SEAL.]

Know ye, that in confidence of your prudence and fidelity, you have been appointed, and by these presents, you, or any one or more of you, are invested with full power and authority to examine Alanson Sweet, on his corporal oath, as a witness in a cause depending in the district court of the United States for the district of Wisconsin, wherein Charles H. Wheeler is complainant, and Russell Sage is defendant, on the part of the complainant, upon the interrogatories annexed to this commission, and therefore you are hereby commanded that you, or any one or more of you, at certain days and places to be appointed

by you for that purpose, do cause the said Alanson Sweet to come before you, and then and there examine him, on oath, upon the said interrogatories, and that you take such examination and reduce the same into writing, and return the same annexed to this writ, closed up under your seal, or the seals of any one or more of you, into the said district court of the United States, before the judge thereof, with all convenient speed.

Witness the honorable Andrew G. Miller, judge of the district court of the United States of America for the district of Wisconsin aforesaid, at the city of Milwaukee, in said district, this sixteenth day of March, in the year of our Lord one thousand eight hundred and sixty-one, and of the independence of the United States the eighty-fifth.

J. M. MILLER, *Clerk.*

42 *Rules.*

On the receipt of the commission made out as aforesaid, by any one of the commissioners named, he shall give notice to the other commissioners named therein, of the time and place of taking the depositions, if possible, and if any of the commissioners are absent at the execution of said commission, any one or more present may proceed to execute the same, (unless otherwise expressly directed therein,) as if all were present; but they must certify that those absent have been duly served with notice of the time and place of executing said commission, or the reasons for their not being so notified.

The persons to whom such commission shall be directed, or any one or more of them, unless otherwise expressly directed therein, shall execute the same as follows:

First. They, or any of them, shall publicly administer an oath to the witnesses named in the commission that the answers given by such witnesses to the interrogatories proposed to them shall be the truth, the whole truth, and nothing but the truth.

Second. They shall cause the examination of each witness to be reduced to writing, and to be subscribed by him, and certified by such of the commissioners as are present at the taking of the same.

Third. If any exhibits are produced and proved before them, they shall be annexed to the depositions to which they relate, and shall, in like manner, be subscribed by the witness proving the same. (This section must be understood to refer to such papers as can be produced upon the examination.) If the paper referred to be a record not subject to the control of the party or the commissioners, it will be sufficient to annex a copy, and the original may be produced on the trial, separate from the commission.

Fourth. The commissioner or commissioners shall subscribe each sheet of the depositions, and annex all the depositions and exhibits to the commission, upon which the return shall be endorsed, and shall close them up under their or his seals, and shall address the same, when so closed, to the clerk of the court from which the commission issued, at his place of residence, with the style of the suit.

Fifth. If there is or is not a direction on the commission to return

the same by mail, they or he shall immediately deposit the packet so directed in the nearest post office.

Sixth. If there be a direction on the commission to return the same by an agent of the party who sued out the same, the packet so directed shall be delivered to said agent.

43 In district court of the United Stat[illegible] for the district of Wisconsin.

CHARLES H. WHEELER, compl't,
vs.
RUSSELL SAGE, defendant. } In equity.

Interrogatories to be propounded to Alanson Sweet, a witness to be produced, sworn, and examined on behalf of the complainant in the above-entitled cause, before Francis Bloodgood, commissioner, to be appointed by commission to be issued out of and under the seal of said court to take said testimony.

1 interrogatory. What is your name, age, and place of residence?

2 interrogatory. Do you know, and how long have you known, the parties, complainant and defendant, respectively, in this suit?

3 interrogatory. Did you some time, and when, with your wife, Emily Sweet, make, execute, and deliver a certain mortgage to one John W. Bates and the said Russell Sage? If yea, upon what property was said mortgage given, and for about what amount?

4. Do you know of your own knowledge, or by conversations with said Russell Sage, who was the owner or owners of said mortgage and debt thereby secured in A. D. 1853, 1854, 1855? If yea, state *state* all know about it, and how you know it.

44 5 interrogatory. Did you, and any one, and what one, of the owners of said mortgage debt, ever make any verbal arrangement in relation to the foreclosure of said mortgage and perfecting the title to said mortgage premises, in the owners of said mortgage? If yea, state fully what that arrangement was, with whom, by whom, and when and where and how it was agreed upon; and whether you concluded said arrangement entirely by yourself, or whether any person, and who, was authorized by you to deal with the owners of said mortgage debt in relation thereto.

6 interrogatory. If, in answer to the last preceeding interrogatory, you answer that there was an arrangement as is there inquired about, state whether it was consumated; and if not, why not?

7 interrogatory. Did you see Russell Sage in Milwaukee, in this district, in the fall of A. D. 1855, and was it before or after the decree in forclosure suit to foreclose said mortgage?

8 interrogatory. If you answer to the last preceeding interrogatory that you did see said Sage in Milwaukee in fall of 1855, and before the said decree, state as nearly as you can when you saw him, and where in Milwaukee you saw him, and whether there was any verbal arrangement or agreement concluded between you and said Sage in relation to the foreclosure suit, and the sale of the said mortgage premises. If yea, state fully what that arrangement was, and

45 when and where, by whom, with whom, in whose presenc

and under what circumstances it was made; and state all you know in relation to it.

9 interrogatory. If you answer to the last preceeding interrogatory that there was such an arrangement as is there enquired about between you and said Sage, or between any one, on your behalf, and said Sage, state whether said Sage said anything, and what, to you about communicating said agreement to said Charles H. Wheeler, and whether said Sage more than once repeated the same.

Last interrogatory. Can you state or set forth any other matter or thing which may be of benefit or advantage to the parties to this suit, or either of them? If yea, set forth the same fully and at large in your answer to this interrogatory.

FINCHES, LYNDE & MILLER,
and M. H. CARPENTER,
Solic. for Compl't.

District court of the United States for the district of Wisconsin.

CHARLES H. WHEELER
vs.
RUSSELL SAGE. } In equity.

And now comes the said defendant, Russell Sage, by his solicitors, and joins in the commission to be issued for the examination of Alanson Sweet as a witness, on behalf of the complainant; and the said
46 defendant, subject to the objections hereafter made, names on his behalf, as a commissioner to act with the said Francis Bloodgood, esquire, Winfield Smith, esquire, one of the commissioners of this court.

And the said defendant submits and urges the following objections to the interrogations propounded to said witness by the complainant:

1st. To all the interrogatories, as leading and informal, and as seeking to elicit incompetent and irrelevant testimony.

2d. To the 4th interrogatory, specifically, as immaterial and irrelevant, and as seeking to give parol evidence of facts directly in issue, and found and passed upon, in a suit to which the complainant and defendant herein were parties, to wit, the foreclosure suit referred to in the bill of complaint in this cause.

3d. To the 5th interrogatory, specifically, as incompetent and irrelevant, and as tending to elicit testimony to facts not in issue by the pleadings in this cause.

4th. To the 6th interrogatory, specifically, the same objections as last above.

5th. To the 8th interrogatory, specifically, the same objection as last above.

6th. To the 9th interrogatory, specifically, the same objections as last above.

7th. And further, specifically, to the 5th interrogatory, because it contemplates testimony and facts transpiring as between third persons.

And the said defendant, relying upon and insisting upon the aforesaid objections, submits, subject to such objections, the following cross-interrogatories to be administered to the said witness, Alanson Sweet.

1st. Had you at the time of the decree in the foreclosure suit mentioned in the direct interrogatories, any interest in the premises described in the mortgage to John W. Bates; and if any, what interest, and the nature thereof? And had you any interest in said premises legal or equitable, subsequent to such decree? And how did you acquire the same, from whom, and when, and whether by verbal or written contract or agreement? Declare fully the particulars of such interest, if any, and all the circumstances by which you acquired the same.

2d. Had not all your interest in said premises theretofore been sold, upon executions against you, and sheriff's deeds passed therefor?

3d. Have you never stated that you had not, at the date of the decree in said foreclosure suit, no interest whatever in said mortgaged premises?

4th. Have you not denied having any interest, legal or equitable, in said mortgaged premises at a period which would include the date of such decree?

5th. Have you not repeatedly denied having any interest in said mortgaged premises for a period shortly prior to said decree,
48 and at the date thereof and subsequent thereto.

6th. Have you not sworn, at divers times, that you had no interest in said mortgaged premises, and under oath, at *at* divers times, declared that you had no interest in the said premises at the periods named in last five (5) preceeding interrogatories?

7th. Have you not, under oath, declared that you had no interest in any property whatever where your title did not appear of record, or anything to that effect or in substance like such declaration?

8th. Did you not, in substance or effect, so declare in your answer, under oath, to a bill in chancery, filed in the district court of the United States for the district of Wisconsin, wherein Holbrook, Carter & Co., of Boston, and others of your creditors were complainants, and yourself and Levi Blossom and others were defendants?

9th. Did you not, in substance or effect, so declare in a deposition under oath, given by you in a certain suit in the circuit court of Milwaukee county, wherein Duncas C. Reed was plaintiff and the Merchants' Mutual Insurance Company was defendant?

10th. Have you not so declared, in substance or effect, and under oath, in other suits or legal proceedings than those above mentioned?

11th. Did you not, in substance or effect, so declare in your answer to a bill filed in the circuit court of Milwaukee county, wherein
——— were complainants, and yourself and others were defen-
49 dants?

12th. If you answer that you had no interest in said mortgaged premises, and also answer the 4th, 5th, 6th, 7th, and 8th direct interrogatories in the affirmative, how happened you to be making arrangements with the defendant herein in regard to the foreclosure and decree mentioned in said direct interrogatories?

13th. Have you prior to the time of this your examination, seen the originals or copies of these direct and cross-interrogatories, or either or any of such cross or direct interrogatories, and when and where did you see them? Who exhibited them or either of them to you?

14th. At the time of the decree is such foreclosure suit, what amount, or about what amount, in the aggregate, of judgments were outstanding against you?

15th. Had you, at the time of the rendition of such decree, any interest, legal or equitable, in any property in the State of Wisconsin aside from said mortgaged premises?

16th. If you answer the last preceeding interrogatory in the affirmative, will you state the nature of the interest, and how you obtained such interest, by virtue of what deeds or contracts, and where such deeds and contracts are? If you shall answer that you obtained or enquired such interest by virtue of any verbal agreement or arrangement, state fully the terms thereof, with whom made, at what time or times made, and all the circumstances connected therewith.

50 17th. If you have, in answer to direct interrogatorys, said that you made any agreement or arrangement with the defendant, Sage, through any agent or agents or third person or persons, give the name or names of such agents or persons. State also *also* on whose behalf you acted, and if on any other's behalf than your own, what authority you had so to act, whether in writing or otherwise, and if on your own behalf, the nature of the authority given by you to any agent or third person if you acted through them; and state also when and where such authority was given by you—who was present.

18th. If you state that any arrangement was made with the defendant, Sage, state whether it was verbal or in writing; and if in writing, whether you have ever seen such writing, when and whose hands you saw it. And state, further, what interest you had in the writing or arrangement.

19. If you shall answer that you had any interest in the mortgaged premises subsequent to the date of the sale under said foreclosure decree, state whether you ever interfered with the arrangements, control, or sale of said premises, after such sale, by any act or acts of your own, personally or by agent; and state particularly by what such acts or acts was or were, and the time and manner of exercising such act or acts. And also state whether any sale or sales of any, and what, portion of the mortgaged premises have been made since the mortgage sale, and whether you were consulted in regard to such sale or sales.

51 20th. Has any account of sales, or of expenses of maintaining said mortgaged premises since the sale thereof under the decree, ever been rendered you, or have you examined any such account, or have you ever demanded such account; and when, where, and in whose presence?

21st. Do you know how much in amount was due upon the mortgage foreclosed by Sage, and before alluded to, at the date of the decree; or do you know how much was claimed by those defending said foreclosure to be due thereon? And if you say that there was less due thereon than the principal and interest of the mortgage, declare fully your knowledge in respect thereto, and all the facts and circumstances by which you arrive at the conclusion you here state.

22nd. Have you conversed with any person or persons as to the sub-

ject-matter of this suit, or as to what your testimony would be herein? With whom *have* so conversed, and when and where?

23d. Have you a suit pending in the circuit court of Dane county, Wisconsin, against Alexander Mitchell? And is not there not involved in such suit an inquiry, to some extent, unto the same matters of fact as are involved in this suit?

24th. Have you not conversed with the plaintiff, Wheeler, about both this suit and your own? And has there not been an understanding between you and him that you were to become witnesses for
52 each other—you for him in this suit, and he for you in your said suit against Mr. Mitchell?

25. Have you had, at any time prior to this your examination, the interrogatories now here propounded to you—either the direct or cross-interrogatories—read to you by any person? If yea, state by whom, and when and where. And have you at any time heretofore stated to any person, and whom, what your answer or answers would be to any or all of such interrogatories?

26th. Have you, at any time prior to this your examination, committed to writing any of your answers to the interrogatories—direct or cross—now here propounded to you? Or have you committed to writing the substance or effect of what your answers would be, or made any memoranda upon the subject of your answers, or what they would be? If yea, when and where are such memoranda?

27. Has any other person or persons, and whom, prior to this your examination, committed to writing what you would testify to on this examination, or upon any examination as a witness in this cause, or the substance and effect of what you would here testify to, or what you would testify to as a witn ss in this cause?

28th. If you state, in answer to the 9th direct interrogatory, that the defendant, Sage, did say anything to you about communicating "said agreement" to Charles H. Wheeler, state when and
53 where he said it to you, and who was present at the time or times.

29th. If you state that any arrangement was made by you or any other person and the defendant, Sage, in relation to the said decree of foreclosure and sale, did you ever inform the complainant, Wheeler, of the fact. And when and where, and how came you to so inform him? Declare fully all the circumstances.

30th. If you state that you did so inform said Wheeler, had you at the time you so informed him, ever seen any agreement or agreements in writing between Alexander Mitchell and said Sage, in reference to the mortgaged premises sold under said foreclosure decree? And when and where did you see such agreements? In whose hands were they, by whom exhibited to you, and in whose presence?

31st. If you state, in answer to the 8th direct interrogatory, that there was a verbal agreement or agreements concluded between you and said Sage, in relation to said foreclosure suit and sale of the mortgaged premises, was it ever reduced to writing? and when and where, and by whom, and in whose presence, and by whose procurement or directions?

32d. Do you know the fact that shortly prior to the decree in said

foreclosure suit, there was an agreement upon the sum or amount due to the complainants in that suit? If yea, by whom was such agreement made and concluded? And do you know whether the com-
54 plainant, Wheeler, knew at the time of such agreement and participated therein; and how? Declare fully and at large.

33d. Have you, in the course of this your examination, made use of or refered to any memorandum, paper, writing, book, or document? If yea, declare what, and produce the same, to be annexed to your deposition.

EMMONS, VAN DYKE & HAMILTON,
Defendant's Solicitors.

U. S. district court, district of Wisconsin.

CHARLES H. WHEELER
vs.
RUSSELL SAGE.

The said complainant, by Finches, Lynde & Miller, and M. H. Carpenter, his solicitors, submits and urges the following objections to the cross-interrogations filed on the part of the defendant to be administered to the witness Alanson Sweet. To all of the said cross-interrogatories, numbered, respectively, one, (1,) two, (2,) three, (3,) four, (4,) five, (5,) six, (6,) seven, (7,) eight, (8,) nine, (9,) ten, (10,) eleven, (11,) twelve, (12,) fifteen, (15,) sixteen, (16,) and twenty-three, (23,) for the reasons that said cross-interrogatories, and each of them, are irrelevant and immaterial, and call for testimony which is incompetent; that they, and each of them, call for testimony which is irrelevant to any matter or thing at issue in this cause; that they, and each
55 of them, are drawn for the purpose and with the intent of making testimony against the witness Sweet, in a suit which has no connection with this suit; that they, and each of them, call for testimony not responsive to any matter or thing called for by the direct interrogatories; that they, and each of them, are not proper or material cross-interrogatories; and that they, and each of them, call for parol evidence of answers in chancery, and records an proceedings in court, and which answers and records are the best evidence; that they, and each of them, call for testimony which relates to transactions and dealings with third parties, and who are not interested in any matter or thing connected with this suit, and are not parties to this suit; and lastly, that the matters and things inquired about in said cross-interrogatories are collateral to and independent of anything at issue in this cause.

FINCHES, LYNDE & MILLER,
Solic. for Complainants.

UNITED STATES OF AMERICA,
District of Wisconsin, ss:

The execution of this execution will appear from the papers hereto annexed.

Dated Milwaukee, April 2d, 1861.

FRANCIS BLOODGOOD,
WINFIELD SMITH,
Commissioners.

56 *Deposition of A. Sweet.*

UNITED STATES OF AMERICA,
District of Wisconsin, ss:

The deposition of Alanson Sweet, of the county of Milwaukee and State of Wisconsin, a witness of lawful age, produced, sworn, and examined upon his corporal oath, on the 23d day of March, 1861, at the office of Francis Bloodgood, in the city of Milwaukee, in said district of Wisconsin, by us, Francis Bloodgood and Winfield Smith, commissioners, duly appointed by a commission issued out of, and under the seal of, the district court of the United States of America for the district of Wisconsin, for the examination of the said Alanson Sweet, as a witness in a certain suit now depending in the said district court, on the equity side thereof, wherein Charles H. Wheeler is the complainant and Russell Sage is the defendant, on the part of the complainant, upon the interrogatories and cross-interrogatories annexed to said commission. The said Alanson Sweet being first duly sworn by Francis Bloodgood, one of the commissioners, as a witness in the said cause, previous to the commencement of his examination, to testify the truth, as well in part complainant as the defendant, in relation to the matters in controversy as between the said complainant and the said defendant, as he should be interrogated, testified and deposed as follows, to wit:

First. To the first interrogatories he saith: Alanson Sweet; age, fifty-seven; residence, Milwaukee, Wisconsin.

57 Second. To the second direct interrogatory he saith: I do know them; have known Sage since 1849, and Wheeler since some time in 1850.

Third. To the third direct interrogatory he saith: I did. My wife Emily and I executed a mortgage to Russell Sage and John W. Bates some time in the year 1849. The amount for which the mortgage was given was sixteen thousand dollars. Said mortgage covered lots four, five, six, and seven, in block fifty-four; and lots three, five, and eight, in block fifty-five; and lots eleven, twelve, and thirteen and fourteen, in block thirty-five; and fractional lot six in section thirty-three, in town. seven, range twenty-two east, all in the fifth ward of the city of Milwaukee. Also piece of land on the east side of northwest quarter of section five, in town. six, of range twenty-two east, bounded and described as follows, to wit: commencing at the northeast corner of said quarter section, and running thence southerly along the east line of said quarter section; thence westerly, parallel with the north line of said quarter section, forty rods; thence south, parallel with the east line of said quarter section, far enough to intersect the south line of said quarter; thence east, along the south line of said quarter section, to the southeast corner of said quarter section; thence north, along the east line of said quarter, to the place of beginning. All those lands are in the county of Milwaukee, State of Wisconsin, and I give the description from recollection.

58 Fourth. To the fourth direct interrogatory he saith: I can't

state definitely, but from general acquaintance with the matter, and from conversations with Sage, Slocum, and Wheeler at different times in the years 1854 and 1855, in the course of negotiations for the settlement and the closing up of this mortgage, I understood, from the statements of each of these parties, (viz: Sage, Slocum and Wheeler,) that they were equal owners of the mortgage and the debt thereby secured.

Fifth. To the fifth interrogatory he saith: I did make an arrangement some time in the fall of 1853. I made a proposition to Wheeler that if they would give me ten thousand dollars, or make such arrangements with Alexander Mitchell as to satisfy him for that amount, I would withdraw my defence to the foreclosure suit for the foreclosure of said mortgage then pending, and would let a decree be taken and a sale had under it, and the title perfected in their own way. He answered, that they wouldn't give that amount, but name a sum that they would give, which I wouldn't accept. I then said to Wheeler that I was going south to be gone some time, probably one or more years, and I would leave the matter with Alexander Mitchell, so that should Sage, Slocum and Wheeler see fit to accept my proposition, that he, Mitchell, would carry it out. H Wheeler answered, that he would confer with Sage and Slocum on the subject, and get their views or conclusions; but that he had no idea that they would agree to pay the ten thousand dollars. Within a few days
59 I saw Alexander Mitchell, and told him the proposition I had made to Wheeler. Told him Wheeler's answer, and also requested him, in case they should come up to the ten thousand dollars, to let me know, and I would execute and send to him (Mitchell) any papers necessary to carry the matter out. Soon after I left for the south. I returned from the south in the summer of 1854. Between that time and the spring of 1855 I had frequent conversations with Wheeler on the subject; the suit was pending or going on all the time, and I frequently intimated to Mitchell that I hoped that Sage, Slocum & Wheeler would come up to the ten thousand, and thereby relieve him (Mitchell) as well as myself to that amount. Mitchell had advanced money for me. Wheeler showed no disposition to come up to that amount. In the spring of 1855, probably in the forepart of May, Wheeler, in conversation with me on the subject, intimated to me that he thought if a perfect title could be perfected to the property specified in the mortgage, that they, Sage, Slocum & Wheeler, would agree to pay the ten thousand dollars. I told Mitchell what Wheeler said, and requested him to keep his eye on the transaction and have it carried out if he could. Some time after this, somewhere about the 25th or 28th of May, 1855, Wheeler told me he had heard from Sage, and that they had concluded to accept my proposition, and that on Mr. Mitchell's return it would be carried out. Mitchell was absent at the time, I not being able to carry out the arrrangement without his presence. In a few
60 days I went to the north, Lake Superior, and was gone till early in November following. On my return I called on Wheeler and inquired of him as to the matter. He told me that it had not yet been perfected, as they had been waiting for my

return, in order to execute papers, or to consent to a decree, or something that required my presence. He also told me that Sage would be here (in Milwaukee) in a few days prepared to close up the matter. I tol him I was ready and anxious to have it ended. (Adjourned till 25th March, 1861, when the witness continued his answer to the 5th interrogatory as follows:) In this same conversation Wheeler informed me that Mitchell had seen Sage in New York in the May previous, and it had been agreed between them that ten thousand dollars, on perfecting title to the mortgaged property, should be paid to Mitchell by the owners of the mortgage, Sage, Slocum & Wheeler. In a few days Sage arrived. I found him in Mitchell's office, probably about the 15th or 20th of November, 1855. As I went in I found Sage and Mitchell together in the back office. In a few moments Mitchell came out into the passage between the two offices. I there met and asked him if Sage had arrived; he said yes, he is in the room. After passing a few words with him about the matter, he told me to go in and see Sage. I did so. I told Sage I was glad to see him, for I was anxious to have our affairs closed. He very soon told me he was not going to carry out the arrangement made by Wheeler to pay ten thousand dollars, or any other sum, to perfect a title to the mortgaged property, and that he did not intend to invest any more money in the transaction. I told him I was very sorry,
61 for I had supposed that the matter had been acted upon in good faith, and my arrangements in money matters had been directed accordingly, and that I was in advance to Mitchell largely, and did know how I could get along, if he did not carry out the arrangement. I told him Mitchell had been advancing moneys for me, and I presumed to a considerable extent, based upon this arrangement to reimburse himself. Sage said that he had furnished one-half of the money that Mitchell had paid to compromise some of my debts, and that he thought some other course could be taken that would answer my purpose, and be better for him, and that he could not pay in any more money on any terms. I told him I was greatly disappointed, and asked him what course he could recommend; he proposed that I should allow a decree to be entered up according to the papers then on file, and a sale to be had on the decree, and title obtained; then a settlement should be had between him and myself, and whatever should be found due to me should be deducted from the amount of the decree, and the property should then be sold at private sale, as it best could be, and the proceeds to be applied to the payment of the amount found to be really due on the mortgage debt, and thebalance to be divided between him, (Sage,) individually, and myself, as we might agree, if there was any. I asked him who should bid off the property; he told me he would, or he had no objections to Mitchell being the trustee for that purpose, if he Mitchell would agree
62 to it. He told me to see what Mitchell said as to undertaking the trust. I immediately went to Mitchell and got his consent to act as trustee, as purposed, and immediately returned to Sage, and told him that Mitchell said he would accept the trust. When I got Mitchell's consent he was in the front room. The whole conversation with Sage was in the back room in Mitchell's banking office, in the

city of Milwaukee; when I told Sage that Mitchell would accept, it was then agreed, as between Sage and I, that the decree should be taken, as before stated, for the full amount claimed on the mortgage by the complainant in the suit; that Mitchell should bid off the property in trust, and put it on the market, and apply the proceeds of sale to the payment of the amount due on the mortgage debt after deducting all the equities, and that the balance, either in property or the avails of the sales of the property, if there was any balance, should be divided as follows: Sage to have one third and I to have two thirds of it. I went back to Mitchell and told him what I had agreed with Sage, and requested him to enter upon the matter according to the understanding and agreement; he told me he would. The decree was afterwards entered and the sale had under it, and the property bid off by Mitchell, in accordance with my agreement with Sage, as before stated; and in further pursuance of said agreement Mitchell put the property on the market, and with a single exception has advised and consulted with me in regard to the sale of it, as to the price of the property as he made them. I saw Slocum just before going north, some time about the first of June, 1855; saw him
63 at the Tremont House, Chicago. This was after having the assurances from Wheeler that they would take the property and pay the ten thousand dollars, as before stated; he told me that he had understood from Wheeler, or Sage, that Mitchell had seen Sage in New York, and they had closed the arrangment to take the property and pay the ten thousand dollars, as before stated; but that it could not be carried out untill Mitchell returned from Scotland; probably in the August following. No other persons were present at any of the interviews I have related, save that Mitchell was in the passage between the two offices in his banking house; at the time entered into the back office to talk with Sage. When I came out to ask him to accept the trust he was in the front office, at the end of the passage from the back office, and after the conclusion of my interview with Sage I found Mitchell still in the front office. This agreement with Sage was previous to the entering of the decree.

Sixth. To the sixth interrogatory he saith, I have answered this interrogatory in my answer to the fifth direct interrogatory.

Seventh. To the seventh direct interrogatory he saith, I did see him about the middle of November, 1855, as stated in my answer to the fifth direct interrogatory, and it was before the decree in the foreclosure suit.

Eighth. To the eighth direct interrogatory he saith, I have answered this fully in my answer to the fifth direct interrogatory.

64 Ninth. To the ninth direct interrogatory he saith, in leaving Sage at the time of making the agreement stated in my answer to the fifth direct interrogatory, he remarked that it would be bad policy to say anything about this arrangement to anybody, not even to Wheeler, as it might possibly affect the title; I told him I had no object in talking about it to any one; he did not repeat the remark; he made it but once, and just as I was leaving him.

Lastly. To the last interrogatory he saith, I know nothing; that is, I cannot now think of anything else.

ALANSON SWEET.

Cross-interrogatories.

To the first cross-interrogatory he saith, I did have an interest in the premises described in the mortgage at the time of and after the decree in the foreclosure suit. In the first place I had given a bond and mortgage to Bates and Sage, in 1849, for sixteen thousand dollars; interest and repairs, not being paid, were to be added to the principal; my interest was that if the property did not pay the mortgage debt the balance would remain against me on the bond; hence it was my interest to make the property pay the debt, or more, if possible. I also had an understanding with Levi Blossom in the fall of 1853, he having then told me that if I could pay him the amount due to him on judgments against me he would quit claim to me his interest in the property; Blossom had bid the property off, as I was informed, on sheriff's sale, on executions on judgments against me; hence
65 my effort to prevent the property from coming to a final sale on the mortgage until I could close my arrangement with Blossom and relieve the property. I had, during the direct examination, the impression that the mortgage refered to was made to Bates & Sage, but am now told that it was made only to J. W. Bates. However this may be, it is same mortgage debt, for I never made any other mortgage to Bates & Sage, or either of them; the business was transacted entirely with Russell Sage, and I never saw J. W. Bates, to knowledge; I, in the first instance, as far as I can now recollect, I acquired my title to the mortgaged property as follows: I obtained lots four and five from Shumuray; six and seven from L. W. Weeks; these lots are in block fifty-four; and lots three, five, and eight, in block fifty-five, I got from Wm. Shew; and lots eleven, twelve, thirteen, and fourteen I got from George H. Walker; fractional lot six, in section thirty-three, town seven, range twenty-two east, 5th ward, Milwaukee, I got from L. W. Weeks; the tract of land in the northwest quarter of section five, town six north, of range twenty-two east, described in my answer to the 5th direct interrogatory, I acquired title to as follows: A part of it I got from the State of Wisconsin, and the rest of it from Martin Delaney; I acquired title to all their premises by deeds from the different grantors I have named, which deeds are on record, to the best of my recollection and belief; as far as my interest in the premises was affected by my arrangement with Sage and Mitchell, it is stated in my answer to the fifth direct interrogatory; the agreement with Blossom which I have mentioned was not in writing.

66 Second. To the second cross-interrogatory he saith, I cannot say, except from information received from others; I never examined the records.

Third. To the third cross-interrogatory he saith, I decline answering this question on the ground that I am advised by counsel that this question is irrelevant and has been suppressed by the court.

Fourth. To the fourth cross-interrogatory he saith, I decline answering this question on the ground that I am advised by counsel that this question is irrelevant and has been suppressed by the court.

Fifth. To the fifth cross-interrogatory he saith, I decline answering this question on the ground that I am advised by counsel that this question is irrelevant and has been suppressed by the court.

Sixth. To the sixth cross-interrogatory he saith, I decline answering this question on the ground that I am advised by counsel that this question is irrelevant and has been suppressed by the court.

Seventh. To the seventh cross-interrogatory he saith, I decline to answer this question for the same reason I have given for refusing to answer the last question.

Eighth. To the eighth cross-interrogatory he saith, I decline to answer this question for the same reason I have given for refusing to answer the last question.

Ninth. To the ninth cross-interrogatory he saith, I decline to answer this question for the same reason I have given for refusing to answer the last question.

Tenth. To the tenth cross-interrogatory he saith, I decline to answer this question for the same reason I have given for refusing to answer the last question.

Eleventh. To the eleventh-cross-interrogatory he saith, I de-
67 cline to answer this question for the same reason I have declined to answer the last question.

Twelfth. To the twelfth cross-interrogatory he saith, this question is based upon a false hypothesis. I have answered that I had an interest in the premises.

Thirteenth. To the thirteenth cross-interrogatory he saith, as to the direct interrogatories, I did not examine them, but I was in Mr. Carpenter's office with him and told him about what the substance of my testimony would be in the case, but did not go into the detail of particulars. I did not, save in one instance, know anything of the cross-interrogatories previous to the commencement of this examination. I went into the office of Charles H. Wheeler to see George Place, who has been in the habit of doing my writing for six or seven years, to get some writing done by him in relation to private accounts; found him sitting at the desk writing. He remarked that he was just using my name in a document he was then engaged upon. I asked him what it was. He replied that it was in relation to my testimony in the case of Wheeler *vs.* Sage. I said what is it. He commenced to read, and read this 13th cross-interrogatory or something like it; I immediately remarked to him that he had better stop reading the paper, as there might be some impropriety in its being read in my hearing, and he accordingly stopped reading. I did not see the paper, or rather did not see what was on it, and knew nothing further of its contents previous to this examination.

Fourteenth. To the fourteenth cross-interrogatory he saith, I am not able to say what amount of judgments were standing against me at the time of the decree. I had an arrangement with Alexander Mitchell to advance money and buy up, or compromise judg-
68 ments or debts standing against me; to what extent he had

progressed at that time I am not now able to say, what amount, or about what amount.

Fifteenth. To the fifteenth cross-interrogatory he saith, I decline answering this question for the reason that I have been informed by counsel that it is irrelevant and has been suppressed by the court.

Sixteenth. To the sixteenth cross-interrogatory he saith, I decline answering this question for the same reason that I have declined answering the fifteenth cross-interrogatory.

Seventeenth. To the seventeenth cross-interrogatory he saith, I did authorize Alexander Mitchell to negotiate with Russell Sage, or the owners of said mortgage, in regard to the foreclosure suit; I acted on my own behalf; my arrangement with Mitchell was not in writing; I can't state more definitely than I have in my 5th direct interrogatory as to when the arrangement was made; to the best of my recollection the place was in his office; nobody was present; we usually talked of our matters in his office. In my answer to the fifth direct interrogatory my answer to the balance of this cross-interrogatory is fully stated.

Eighteenth. To the eighteenth cross-interrogatory he saith, I was told by my attorney in the foreclosure suit, and by my agent, Alexander Mitchell, that a written agreement had been made with Sage, but I have never seen it. The interest which I had in the arrangement is stated in my answer to the fifth interrogatory.

Nineteenth. To the nineteenth cross-interrogatory he saith, by permission of Alexander Mitchell, who held the trust, I have been in possession of lot eight, block fifty-five, ever since the decree up to the present time, also in possession of the temporary buildings on lot five in the same block, from the time of the decree up to May last,
69 with the understanding with Mitchell, who held the trust, that whenever the property was sold, or that it came necessary to sell it to meet the mortgage debt, that I was ready to yield possession of the same; lot three, block fifty-five, was lying idle, or rather it was being occupied by F. Gartlan without paying any rent or consideration for the use of the same; Gartlan called on me to know if he could secure the lot for the purpose of putting on it a temporary cooper shop; I understanding from Mitchell that he had sold property enough to more than pay the mortgage debt, I gave Gartlan a lease for five years in consideration that he should pay one hundred dollars per year, quarterly, in advance, also pay all taxes and do a certain amount of filling of earth in the lot, all of which is specified in the lease, which I think is dated in 1858, or 1859; I reported all this transaction to Mitchell; I understand from Mitchell that sales had been made by him of the following portion of mortgaged premises, viz: lots four, five, six, and seven, in block fifty-four; lots eleven, twelve, thirteen, and fourteen, in block thirty five; and a portion of fractional lot six; Mitchell consulted me as to the sale of lots four, five, six, and seven, in block fifty-four, and also as to the portion of fractional lot six, so far as the price was concerned. Lots eleven, twelve, thirteen, and fourteen, he sold during my absence, but he told me about it when I returned. Mitchell, up to February, 1860, consulted me in regard to the care of the property; I also told Mitchell that

should the lot occupied by Gartlan be wanted before the five
70 years lease expired, I would be responsible for the clearing of the premises by said Gartlan.

Twentieth. To the twentieth cross-interrogatory he saith, I called on Mitchell at different times in the winter of 1859 and 1860. I told him I wanted to see an account of the sales the property, and of all other matters standing between us, and wished him to make up an account for me. He readily promised to do so, as soon as he had sufficient leisure time. I felt anxious to see the account and continued to call for it, but he put me off as before. Finally told me to call on Monday next and he would have the statement ready for me. I called on the following Monday as agreed. It being about the 6th of February, 1860. He handed me a statement, I looked at it, found it was made up in round sums, and I told him it was not very satisfactory. That I expected a statement in detail. He insisted that the statement was right in the aggregate; I asked him if he would allow me to carry away the statement. He said, no. I asked him why. He answered that he did not wish to furnish clubs to break his own head. After some other conversation I left. No parties present but ourselves, at this or any other interview. Previous to this time, in 1858 or 1859, just previous to Mitchell's leaving for Scotland the last time, I called upon Mitchell, told him I wished he would make a statement of our account and leave it with David Ferguson, so that in case of his death or any accident that our account and matters might
be settled up without difficulty. He said he hadn't time to
71 make it up, but that Emmons understood all our transactions, and that in case of his, Mitchell's, death there would be no difficulty in closing it up. I was anxious to have it fixed before he went away, but he wouldn't do it, he said he hadn't time. No account has been rendered to me other than I have stated.

Twenty-one. To the twenty-first interrogatory he saith, I do not, only from circumstance, which I will relate On the afternoon or evening before the decree was entered I was in the office of Emmons and Vandyke, my attorneys in the case, consulting with Emmons in regard to the matter. Emmons produced the accounts of the plaintiffs and figured them up in my presence, and the amount, as near as I can recollect, as he stated it, after such figuring, was $26,000 and two or three hundred dollars over. From this was to be deducted rents from the time they, Sage, Slocum and Wheeler, took possession of the warehouse, up to the date of the decree. They took possession of the warehouse some time in 1850 or 1851. Think it was in Sept., 1850. The rent, by agreement made shortly before entering the decree, was to be $2,000, and interest to be added on this amount of rent semi-annually at 12 per cent. That being the same interest semi-annually that was payable on the mortgage. This $26,000 and some hundred dollars, less this rent and interest thereon, as I have stated, and some other small items, was all I suppose was due on the mortgage at the time of the decree. The amount actually due at the time
of the decree would not vary far from somewhere between
72 $16,000 and $18,000. This conclusion is made from my recollection and from what Emmons stated at the time.

Twenty-second. To the twenty-second interrogatory he saith, I have had some conversation with Mr. Carpenter in his office, some two or three weeks ago. I have also conversed with Hiram Slocum and with Wheeler; I had a conversation with Slocum at the Chicago Tremont House, in the latter part of May or fore part of June, 1855, as I have before stated. This is the conversation I have spoken of in my answer to the 5th direct interrogatory. Also Slocum called at my house in Milwaukee in the winter of '58 or '59 or '59 or '60, I am not able to state which, and conversed with me on this subject. Within a few days afterwards I talked with him about it at the Newhall House. I have talked with Wheeler many times with reference to this suit, at my house and at his office, at the Newhall House and perhaps on the street. Can't now fix the particular dates. In these conversations I told Wheeler and Slocum, generally, what the facts were as between Mitchell, Sage and myself. Nothing was about my being a witness.

Twenty-third. To the twenty-third cross interrogatory he saith, I have a suit pending in the circuit court of Dane county, Wisconsin, against Mitchell, and if I understand the matter, the facts involved in this suit are to be inquired into to some extent, and are to some extent involved in my suit against Mitchell.

Twenty-fourth. To the twenty-fourth cross interrogatory he
73 saith, I have conversed with Wheeler about my suit, and also about his, but no understanding in regard to our being partial witnesses for each other in the different suits has been made or intimated. I suppose he will be a witness in my suit, but there has been no collusion or agreement between us as to giving evidence in either suit.

Twenty-fifth. To the twenty-fifth cross-interrogatory he saith, prior to my examination I never had any of the interrogatories herein, direct or cross, propounded to me, nor did I see or hear read, or read any of the interrogatories, direct or cross, except as I have stated in my answer to the 13th cross-interrogatory. I have often heretofore talked with Wheeler, and I have talked with Slocum, and with Carpenter, as I have mentioned as to my general knowledge of the facts, but have never stated to any one what my specific answer would be to any specific question.

Twenty-sixth. To the 26th cross-interrogatory he saith, prior to my examination under this commission I did not commit to writing any of my answers to the interrogatories, direct or cross, or of the substance or effect thereof.

Twenty-seventh. To the twenty-seventh cross-interrogatory he saith, before the commencement of this examination I have no knowledge of any such writing or memorandum. I have never authorized, previous to this examination, any such writing.

Twenty-eighth. To the twenty-eighth cross-interrogatory he saith, at the close of the verbal arrangement between Sage and myself in Mitchell's back office, in this city, as set forth in my answer to the 5th direct interrogatory, as we were parting, Sage remarked to me that it would not be good policy to say anything about this arrange-
ment to any person, not even to Wheeler, as it might affect the
74 title to the property. There was no one present.

Twenty-ninth. To the twenty-ninth cross-interrogatory he saith, some time in 1859, I think, it might have been in 1858, Wheeler, intimated to me that he thought Sage had retained an interest in the mortgaged property, and requested me to tell him what I knew about it. I waived the subject, rather declining to say anything about it. It passed off then. Shortly afterwards he spoke to me again on the same subject, saying that Slocum assured him that he was confident Sage retained an interest in the property. I then told him that if Sage did retain an interest Mitchell would know all about it; and as he, Wheeler, and Mitchell were on the best of terms, he had better inquire of Mitchell. Not long after I fell in with Slocum and Wheeler at the Newhall House. Wheeler proceeded to relate to Slocum what Mitchell had told him in regard to Sage's interest, which was so nearly according to the facts that I was satisfied that Wheeler had obtained from Mitchell the truth in regard to the affair. Wheeler asked me if his statement from Mitchell was in accordance with the facts? I told him that I presumed Mitchell, if he said anything about a transaction of that kind. he would not mistake that he might rely upon what Mitchell said. Slocum asked me if he could rely upon the statement received from Mitchell by Wheeler? I told him that he might rely upon what Mitchell said, as he, Mitchell, knew what the facts were. Not long after this last conversation, having pressed Mitchell & Emmons both so strongly to make me a statement of my affairs with Mitchell, and getting no
75 satisfaction, I came to the conclusion that I should have to proceed to coersive measures. I then talked freely with Wheeler about the transaction, stating to him all the facts, and confirming the statement made by Mitchell to him.

Thirtieth. To the thirtieth cross-interrogatory he saith, I had never seen any agreement in writing between Mitchell and Sage in reference to the mortgaged premises.

Thirty-first. To the thirty-first cross-interrogatory he saith, I never saw any instrument in writing embodying the verbal agreement between Sage and myself. I have no personal knowledge that there was an agreement in writing containing the terms of such agreement.

Thirty-second. To the thirty-second cross-interrogatory he saith, I do not know the fact that shortly prior to the decree in said foreclosure suit there was an amount agreed upon as being the balance due on the mortgage debt after deducting the equities.

Thirty-third. To the thirty-third cross-interrogatory he saith, I have not done so except in referring to Solcum's bill of complaint *versus* Sage, suit pending in Troy, State of New York, in 1860, which I referred to in my answer to the 21st cross-interrogatory, and to a memorandum made by me during the progress of this examination. On commencing the examination before the commissioners, sitting down with him and stating to him verbally my answers, as he read or propounded the questions or interrogatories, according to the best of my recollection, we proceeded until about the middle of the 5th direct interrogatory. The first day the examination was in the office
76 of Mr. Bloodgood, one of the commissioners. Mr. Bloodgood

being interrupted more or less during the examination, by the entrance of persons on business not connected with the examination, I thought I would pursue a different course the following day. I accordingly examined several of the questions to be answered the next day, and concluded it would expedite the examination and I should write out a memorandum of the substance of my answer as near as I could, commencing with the 5th direct interrogatory and proceeding on from time to time, according to the adjournments. Other pressing business of the commissioner's calling off his attention so that he could not devote to this examination more than two or three hours per day, when I came in on the first adjournment day I introduced the memorandum that I had made, and told the commissioners that it was very near the substance of the answer I should give, as far as it went; that he might take it and copy from it. That I would set by and make such corrections as were necessary, as the language was entirely my own, and without counsel, advice, direction or intimation made by any other person or persons, either directly or indirectly. The commissioners remarked to me that he could not take a memorandum and copy from it; that I must answer the interrogatories as he read and put them to me, and he would take down my answers as I made them orally. I accordingly, during the whole of the subsequent examination, answered the interrogatories, as put me, by reading from, or stating in substance, the contents of the memo-
77 randa which I had made; the commissioners sometimes correcting the phraseology, and, in some instances, rejecting on acount of irrelevancy, according to his knowledge of the issue in the suit. I pursued this course, from day to day, until all the direct and cross interrogatories were gone through with. As stated, I made this memorandum without consulting or refering to any other documents, memorandums, or instruments of writing whatever, save the questions contained in the commission, and in one instance refering to Slocum's complaint *versus* Sage, in a suit in New York State. These memoranda were written down by a young man and myself in a room alone and apart from all others; I dictating and he writing in accordance with my direction. The answers taken by the commissions will not exactly conform to the wording of my memoranda, but the substance contained in the answers, as written by the commissioners, I believe to be very near the same, except that something were rejected as irrelevant, not responsive to the questions, or incompetent. I give to the commissioners all these memoranda, made and so used by me, to be annexed to my deposition, as required in the last cross-interrogatory. The bill of complaint in the Slocum or Wheeler case is not in my possession. I saw it when Slocum was here some months ago, and not since then. That portion of the answer to the 21st cross-interrogatory in which I attempted to allude to said bill of complaint, as appears from my memoranda, the commissioner would not take down as not responsive to the question and incompetent.

ALANSON SWEET.

Sworn to and subscribed this 2d April, 1861, before us.

FRANCIS BLOODGOOD,
WINFIELD SMITH,
Commissioners.

78 And now we, Francis Bloodgood and Winfield Smith, of the city of Milwaukee, and district and State aforesaid, commissioners duly appointed to take the deposition of the said Alanson Sweet, whose name is subscribed to the foregoing deposition, do hereby certify that, previous to the commencement of the examination of the said Alanson Sweet, as a witness in the said suit between the said complainant and the said defendant, he was duly sworn, by Francis Bloodgood, one of the commissioners, to testify the truth in relation to the matters in controversy between the said Charles H. Wheeler, complainant, and the said Russell Sage, defendant, so far as he should be interrogated concerning the same. That the said deposition was taken at the office of Francis Bloodgood, one of the commissioners, in the said city and district aforesaid, the examination commencing on the 23d day of March, 1861, and ending the 2d day of April, 1861. That, in taking said deposition, the interrogatories and cross-interrogatories were seperately read over to the said witness, and he being required to answer them seperately in the order in which they occur, and the answers of said witness were reduced to writing, as he gave them, by one of the commissioners. And that after such deposition was taken, as aforesaid, the interrogatories and the answers of the said witness thereto, as written down, were read over to the said witness, and that, thereupon, the said answers or deposition of the said witness was signed and sworn to by the said witness before us, (the oath being administered by Francis Bloodgood, one of the commissioners,) at the place and on the day and year last aforesaid.

79 In testimony whereof we have hereunto set our hands and affixed our seals at the city of Milwaukee, in said district, this 2d day of April, 1861, and of the independence of the United States of America the 85th.

FR. BLOODGOOD,
WINFIELD SMITH,
Commissioners.

Commissioner's fees, $40.

Memoranda made by Sweet.

Answer to 5th interrogatory. I did, in the fall of 1853, propose to Chas. H. Wheeler, one of the owners of said mortgage, that if they, the owners of said mortgage, would pay to me or arrange with Alexander Mitchell, of Milwaukee, so as to relieve me on account of monies advanced by Mitchell for me, ten thousand dollars, I would discontinue the defence I was making in the foreclosure suit then pending, and allow them to take a decree for the amount as it appears by the papers, and thereby to perfect title by sale of the premises mortgaged. Wheeler declined the offer, saying they were willing to pay something, but not that amount, but would advise with Sage & Slocum on the subject; this conversation was on the street, passing from his house to Walker's Point bridge, in Milwaukee. Soon after this conversation I left for Mobile and other places in the south, to be absent, as I supposed, a year or more, but before leaving I told Alexander Mitchell the offer I had made Wheeler, and requested him to keep

his eye on the matter, and if they, the owners of said mortgage,
80 should come up to the proposition that I had made, as before stated, say $10,000, to let me know and I would execute any papers necessary to carry out the object; I left this matter in this shape, and nothing was done by way of compromise, until the spring of 1855 the said Wheeler intimated to me that he thought Sage & Slocum were willing to do something, and he would confer with them further on the subject; this was in the fore part of May, 1855. I told Mitchell what Wheeler had intimated and that I wished him to look after the matter, as I was going north, to be gone all season, (to Lake Superior.) Mitchell soon after left for New York. Some time in the latter part of May or early in June, as I was shipping at Wheeler's warehouse my stuff to go north, Wheeler told me they (the owners of the mortgage) would pay the ten thousand dollars, as I had proposed; say on Mitchell's return home they would make such financial arrangements as would relieve me to that amount with Mitchell; I answered that I was well satisfied, and should always feel that he had befriended me in this matter, and I told him Mitchell well understood my anxiety to have this matter closed; he said to me it would be carried out faithfully on Mitchell's return. In a few days I went north, and did not return until early in November following; soon after my return I met Wheeler and Mitchell, but not together, and they both told me that they had been waiting my return to close up that transaction in regard to the foreclosure suit on the Bates & Sage mortgage, meaning to pay on the part of Wheeler, Sage & Slocum and to receive on the part of Mitchell, as my representative, the $10,000, as Wheeler had agreed to pay May previous; Mitchell also told me that he had seen Sage and had closed the arrangement for the $10,000 on perfecting title to the mortgaged property in the owners of the mortgage; that Sage would be here in a few
81 days prepared to pay over the money and close the matter up. I also got the idea from Mitchell, Wheeler, or Emmons, that Mitchell had seen Sage in New York, and agreed that ten thousand dollars, on perfecting title to the mortgaged property, should be paid to Mitchell by the owners of the mortgage.

In a few days Sage arrived. I found him in Mitchell's office, probably near the 15th or 20th of November, 1855. As I went in I found Sage and Mitchell together in the back office. In a few moments Mitchell came out into the entry between the two offices. I there met him and asked him if Sage had arrived. He said, yes, he's in the room, but we are not to get any money of him. I asked, Why? He said he could not say, but for me to go in and see Sage. I did so. I told Sage I was glad to see him, for I was anxious to have our affairs closed. Speaking of the suit on the mortgage, he very soon told me he was not going to carry out the arrangement made by Wheeler to pay $10,000 or any other sum to perfect a title to the mortgaged property, and that he did not intend to invest any more money in the transaction. I told him I was very sorry, for I had supposed that the matter had been acted upon in good faith, and my arrangements in money matters had been directed accordingly, and that I was in advance to Mitchell largely, and I did not know how I

could get along if he did not carry out the arrangement. I told him Mitchell had been advancing money for me, and I presumed to a considerable extent, based upon this arrangement to reimburse himself. Sage said that he had furnished one half of the money that Mitchell had paid to compromise some of my debts, and that he thought some other course could be taken that would answer my purpose and be better for him, and that he could not pay in any more money on any terms. I told I was greatly disappointed and asked what
82 course he could recommend. He proposed that I should allow the decree to be entered up according to the papers then on file and a sale to be had on the decree and title obtained; then a settlement should be had as between him and myself, and whatever should be found due to me should be deducted from the decree, and the property should then be sold at private sale as it best could be, and the proceeds to be applied to the payment of the amount found to be due to him, Sage, and the balance to be divided between him and myself as we might agree, if there was any. I asked him who should bid off the property. He told me he would, or he had no objections to Mitchell being the trustee for that purpose, if he, Mitchell, would agree to it. He told me to see what Mitchell said as to the undertaking the trust. I went to Mitchell, told him what Sage proposed. I also asked Mitchell if he would take a part interest in the result? He said he would not, but he would act as trustee and I should say so to Sage. I went back to Sage, told him what Mitchell said; it was then agreed as between Sage and myself that the decree should be taken, as before stated, for the full amount of Sage's claim. Mitchell should bid off the property in trust and put it on the market, and apply the proceeds of sale to the payment of the amount found to be due to Sage after all equities were deducted, and the balance either in property or the avails of the sales of the property, if there was any left, was to be divided. Sage was to have one-third and I was to have two thirds. I went back to Mitchell and told him what I had agreed to with Sage, and requested him to enter upon the matter according to the understanding, as before stated. He told me he would, and did bid off the property according to my understanding with Sage, as before stated, and has invariably, save one instance, advised with me as to the sales of the property, so far as sales have come to my knowledge. I saw
83 Slocum just before going north, and after having the assurance from Wheeler that they would take the property and pay the $10,000, as stated, and Slocum then (at the Tremont House in Chicago) told me that he understood, either from Wheeler or Sage, that Mitchell had met Sage in New York and they had closed the arrangement to take the property and pay the $10,000, as aforesaid, but that it could not be carried out until Mitchell returned from Scotland, which would probably be in August.

No parties were present at any of these interviews before related, save, as I have said, Mitchell was in the entry or passage between the two offices in his bank at the time of my interview, as stated, with Sage. I left him there, went in and talked with Sage. When I came out Mitchell was standing at a desk near the place where I left him on going in. I then told him Sage's proposi-

tion. After returning to Sage and telling him that Mitchell would accept the trust as we had talked, I left the office and knew no more of the transaction until it was being carried out by decree and sale. This arrangement was all previous to the decree being entered.

Ans. to 1st cross-interrogatory. I had an interest. In the first place I had given a bond and mortgage to Bates and Sage in 1849 for sixteen thousand dollars, interest and repairs, not being paid, to be added to the principal. My interest was that if the property did not pay the mortgage debt the balance would remain against me on the bond; hence it was my interest to make the property pay the debt, or more if possible. I also had an understanding with Levi
84 Blossom (if I am rightly informed, Blossom had bid the property off at sheriff's sale on execution) in the fall of '53. Blossom told me that if I could pay him the amount due to him on the judgments against me he would quit claim to me his interest in the property; hence my effort to prevent the property from coming to a final sale on the mortgage, if possible, until I could close my arrangements with Blossom and relieve the property. (NOTE.—I had, during the direct examination, the impression that the mortgage referred to was made to Bates and Sage, but am now told that it was made only to J. W. Bates. However this may be, it is the same mortgage debt, for I never made any other mortgage to Bates and Sage, or to either of them.) The business was transacted entirely with Russell Sage, and I never saw J. W. Bates, to my knowledge.

2d answer to cross-interrogatory. I cannot say, except from information received from others; I never examined the record.

(Refuse to answer cross-interrogatories 3, 4, 5, 6, 7, 8, 9, 10, 11, 15 and 16.)

3d Ans. to cross-interrogatory 3, 4, 5, 6, 7, 8, 9, 10, 11. I decline answering on the ground that my attorney tells me that they have been suppressed by the court.

12th cross-interrogatory.

Ans. Find my answer in reply to the first cross-interrogatory. This question is based upon a false hypothesis; I have answered an interest in the premises.

13th cross-interrogatory.

Ans. As to the direct interrogatories, I did not examine them, but I was in Mr. Carpenter's office with him, and told him about what the substance of my testimony would be in the case, but did not go into detail of particulars. I did not, save in one instance, know anything of the cross-interrogatories. I went into the office of Chas. H. Wheeler to see George Place (who had been in the habit of
85 doing my writing for some six or seven years) and get some writing done by him relating to my bridge accounts; found him sitting at the desk writing; he remarked that he was just using my name in a document he was then engaged upon. I asked him what it was? He replied that it was in relation to my testimony in the case of Wheeler *vs.* Sage. I said, what is it? He commenced to read, and read this thirteenth interrogatory, or something like it. I immediately remarked to him that he had better stop reading the paper, as might be some impropriety in its being read in my hearing,

and he accordingly stopped reading. I did not see the paper, and know nothing further of its contents.

14th cross-interrogatory.

Ans. I am not able to say what amount of judgments were standing against me at the time of the decree I had an arrangement with Alexander Mitchell, to advance money and buy up or compromise judgments or debts standing against me. To what extend he had progressed at that time I am not now able to say.

15th and 16th.

Ans. I decline answering, having been informed by my attorney that they are irrelevant and have been suppressed by the court.

17th cross-interrogatory.

Ans I did authorize Alex. Mitchell to negotiate with Russell Sage in regard to this foreclosure suit on the Bates and Sage mortgage. I acted on my own behalf. My arrangement with Mitchell was not in writing. In the 5th direct interrogatory my answer to the balance of the 17th cross-interrogatory is fully stated, and I here refer
86 to that.

18th cross-interrogatory.

Ans. I was told by my attorney and by my agent that a written agreement had been made with Sage, but I have never seen it. Never having seen the writing, I am not able to say what it contains. The balance of my answer to this 18th cross-interrogatory will be found in my answer to the 5th direct interrogatory.

19th cross-interrogatory.

Ans. I have been in possession of lot 8, B, 55, ever since the mortgage was made, since the decree up to the present day. Also in possession of the temporary buildings on lot 5, in same block, with the understanding with Mitchell, who held the trust, that whenever the property was sold, or that it became necessary to sell it to meet the m'tge debt, that I was ready to yield possession of same, and it so remains to this date; and also lot 3, B, 55, was laying idle, or rather, it was occupied by a man whose name I do not now recollect, F. Gartlan, without paying any rent or consideration for the use of the same. This man Gartlan called upon me to know if he could secure the lot for the purpose of putting on it a temporary cooper shop. I understanding from Mitchell that he had sold property enough to more than pay the m'tge debt, I gave this man a lease for 5 years, in consideration that he should pay one hundred dollars per year, quarterly in advance, also pay all the taxes and do a certain amount of filling in earth in the lot. All of which is specified in the lease, which, I think, is dated some time in 1858 or 1859. I reported all the transaction to Mitchell. Mitchell counseled with me in regard to the sale of the wharehouse, also the sale to the Beloit R. R. After that he made one sale in my absence, amounting to 10,000, which he advised me of on my return. I also told Mitchell that should
87 the lot occupied by Gartlan be wanted before the 5 years' lease had expired, I would be responsible for the delivery of the premises by said Gartlan.

20th cross-interrogatory.

Ans. I called upon Mitchell at different times in the winter of

1859–'60; told him I wanted to see an account of the sales of all property and of all other matters standing between us, and wished him to make up an account for me. He readily promised to do so as soon as he had sufficient leisure time. I felt anxious to see the account and continued to call for it, but he put me off as before. He finally told me to call on Monday next, and he would have the statement ready for me. I called on the following Monday, as agreed, it being about the 6th of Feb., 1860. He handed me a statement. I looked at it, found it was made up in round sums, and told him it was not very satisfactory; that I expected a statement in detail. He insisted that the statement was right in the aggregate. I asked him if he would allow me to carry away the statement. He said no. I asked him why. He answered that he did not wish to furnish me with clubs to break his head. After some other conversation, which had nothing to do with the case, I left. There were no witnesses present at this or any other interview named.

21st cross-interrogatory.

Ans. I have often applied to Mr. Mitchell, as before stated, to make me an account of our matters, so that I might know how they stood. Not being able to get satisfactory answer from him, I can only state what information I have received from other sources. On the day or evening before the rendering of the Bates and Sage decree, I was in Emmons' office, talking upon the subject with Emmons,
88 and he then figured up the matter, and told me the amount claimed was about $26,200 or thereabouts. From this the equities, when ascertained, were to be deducted, to wit: rents (while occupied by the owners of the m'tge) of the wharehouse property and interest on the same a 12 p. c., (the same rate paid on the mortgage to the date of the decree,) with some other items overcharged, probably not exceeding $1,000, which would leave the balance, as estimated by me, at from $16,000 to $18,000 remaining due on the mortgage debt. Slocum complaint against Sage in suit pending at the time—the complaint was made in 1860, in the city of Troy, State of New York, and sworn to by said Slocum—shows that six thousand seven hundred and four dollars and fifty-six cents was the amount that Sage accounted to said Slocum for as being his (Slocum's) one-third share of the mortgage debt at the time the decree was entered. This would show, as Sage understood it, to be actually due at that time $20,113 68, total of said m'tge debt.

22d cross-interrogatory.

Ans. I had some conversation with Mr. Carpenter, as stated in my answer to the 13th cross-interrogatory. I have talked with Wheeler at many different times, once passing from his house to Walker's Point bridge, in fall of 1853. Have also talked with him in his office—one time in particular, in spring of 1855. Had many other conversations with him, principally in the streets. Also talked with Mr. Slocum in Chicago, at the Tremont House, in May or June, 1855. Also with Slocum and Wheeler at my house and at the Newhall House, in the winter of 1858–'59 or 1859–'60. I think the latter.

23d cross-interrogatory.

Answer. Yes.

89 24th cross-interrogatory.

Ans. I have conversed with Wheeler about my suit and also about his, but any intimation in regard to our being partial witnesses for each other in the different suits has never been made by me, neither has Wheeler intimated anything of the kind.

25th cross-interrogatory.

Ans. I have often talked with Wheeler as to what my knowledge of the facts in the case were, but never to tell him or any other person what my specific answers would be; for my answer to the balance of this interrogatory, I refer to my answer to the 13th preceding cross-interrogatory.

26th cross-interrogatory.

Ans. To the first part, I answer no. To the second part, I answer no.

27th cross-interrogatory.

Ans. I have no knowledge of any such writings or memorandums, and have never authorized any such memorandums or writings.

28th cross-interrogatory

Answer. At the closing of the verbal agreement between Sage and myself in Mitchell's back office in this city, as set forth in my answer to the 5th direct interrogatory answer, as we were parting, Sage remarked to me that it would not be good policy to say anything about this arrangement (meaning the one then and there made) to any person, not even to Wheeler, as it might affect the title to property. I answered that it was no object to me to tell about it. No person was present at the time referred to except ourselves. No one present.

29th cross-interrogatory.

Answer. Some time, 1859, I think, Wheeler intimated to me that he thought Sage had retained an interest in the sale of the
90 mortgaged property, and requested me to tell him what I knew about it. I waived the subject, rather declining to say anything about it. It passed off then. Shortly after he again spoke to me on the same subject, saying that Slocum assured him that he was confident Sage retained an interest in the property. I then told him that if Sage did retain an interest Mitchell would know all about it, and as he and Mitchell were on the best of terms he had better inquire of him. Not long after I fell in with Slocum and Wheeler at the Newhall House. Wheeler proceeded to relate to Slocum what Mitchell had told him in regard to Sage's interest, which was so nearly according to the facts that I was satisfied that Wheeler had obtained from Mitchell the truth in regard to the affair. Wheeler asked me if his statement obtained from Mitchell was in accordance with the facts. I told him that I presumed Mitchell, if he said anything about a transaction of that kind, would not misstate it, and that he might rely upon what Mitchell said. Slocum asked me if he could rely upon the statement as received from Mitchell by Wheeler (we were then in the Newhall House.) I told him he might rely upon what Mitchell said, as he knew what the facts were. Not long after I pressed both Mitchell and Emmons so strongly to render me a statement of my accounts with Mitchell, and could get no satisfaction, that I came to the conclusion that I should have proceed to coersive

measures, and then talked freely with Wheeler about the transaction, stating to him all the facts and confirming the statements made by to him by Mitchell.

30th cross-interrogatory.

Ans. I had never seen any agreement in writing between Mitchell and Sage in reference to the mortgaged premises.

91 Mitchell often told me that he held such an agreement, yet, on my pressing him on the 6th of February, 1860, to let me see it, he declined entirely to do so. No partarties were present except ourselves.

31st cross-interrogatory.

Ans. I stated in my answer to the 5th direct interrogatory, to which I would now refer, and also in answer to the 30th cross-interrogatory, all that I know in relation to the instrument or instruments in writing sought for.

32d cross-interrogatory.

Ans. I do not know the fact that, shortly prior to the decree in said foreclosure suit, there was an amount agreed upon as due the complainants in that suit, but I do know that the amount due on the m'tge debt, after deducting the equities, did not amount to the sum for which the decree was entered. I do not know as to Wheeler's participating in the transaction at that time or knowing anything of the result.

33d cross-interrogatory.

Ans. I have done so, except in refering to Slocum's bill of complaint *vs.* Sage, in suit pending in Troy, in State of New York, in 1860, which I referred to in my answer to the 21st cross-interrogatory, and to this memoranda made by me, made during the progress of this examination. On commencing the examination before the commissioners, sitting down with him and stating to him verbally my answer, (as he read and propounded the questions or interrogatories,) according to the best of my recollection, we proceeded until about the middle of 5th direct interrogatory the first day. The examination was in the office of the commissioner, Mr. Bloodgood. Being interrupted more or less during the examination by the entrance of persons

92 on business not connected with the examination, I thought I would pursue a different course the following day. I accordingly examined several of the questions to be answered the next day, and concluded it would expedite the examination if I should write out a memorandum of the substance of my answer, as near as I could, commencing with 5th direct interrogatory and proceeding on from time to time, according to the adjournments, other pressing business of the commissioner's calling off his attention, so that he could not devote to this examination more than two or three hours per day. When I came in the next morning I introduced the memorandum that I had made, and told the commissioner that it was very near the substance of the answer I should give, as far as it went; that he might take it and copy from it; that I would sit by and make such corrections as were necessary, as the language was entirely my own, and without counsel, advice, direction, intimation, made by any other person or person, either directly or indirectly.

John W. Bates to Russell Sage.

For and in consideration of the sum of eight thousand dollars, to me in hand paid, I, John W. Bates, of the city of Troy, in the county of Rensselear and State of New York, do hereby grant, bargain, sell, assign, and set over unto Russell Sage, of the same place, my
123 undivided half of a certain indenture of mortgage, executed by Alexander Sweet, and Emily, his wife, of the city and county of Milwaukee, State of Wisconsin, bearing date the 12th day of September, 1849, to John W. Bates and Russell Sage, in the city of Troy aforesaid, on certain lots and appurtenances in the city aforesaid, together with my undivided half of the bond therein referred to, and which said mortgage is recorded in book of mortgages, vol. L, at pages 29 and 30, on the 17th day of October, 1849, at ½-past 10 o'clock a. m. To have and to hold the said bond and mortgage, and the debt thereby secured, and all the interest conveyed by the mortgage in and to the lands therein described, to the said Russell Sage, his heirs, executors, and administrators and assigns forever, for his and their use and benefit. And the said Russell Sage is hereby authorized to receive and enforce the payment of the said money by all lawful ways and means in law or equity.

In witness whereof, I have hereunto set my hand and seal this first day of May, A. D. 1850.

JOHN W. BATES. [SEAL.]

Signed, sealed, and delivered in presence of—
R. H. OJERS.
W. N. BROWN.

STATE OF NEW YORK,
Rensselaer County:

On this fifteenth day of May, 1850, personally appeared before me, the subscriber, a commissioner of deeds appointed by the governor of the State of Wisconsin, to take the proof and acknowledgement of deeds and instruments under seal to be used and recorded in said State, and to take oaths and affirmations, appeared John W.
124 Bates, and acknowledged that he had executed the within instrument for the uses and purposes therein mentioned. And I further certify that I know the John W. Bates who executed the within instrument, to be the same person mentioned in and who executed the within instrument.

JOHN FITCH, [SEAL.]
Commissioner, &c.

Recorded May 20th, A. D. 1850, at 9½ o'clock a. m., in vol. N of mortgages, on page 22.

STATE OF WISCONSIN,
County of Milwaukee:

REGISTER'S OFFICE.

I do hereby certify that the foregoing documents are true and correct transcripts from the records in my office, and recorded as follows:

[REC. CCVII, D. T. 1862]—5

Alex. Mitchell and wife to Milwaukee and Beloit Railroad Co., in vol. 54 of deeds, on pages 570 and 571.

Same to Charlotte J. Baker, in vol. 56 of deeds, on page 237.

Same to Robert H. Strong et al., in vol. 56 of deeds, on page 283.

Same to John B. Merrill and T. W. Burrows, in vol 57 of deeds, on pages 190 and 191.

Alanson Sweet and wife to John W. Bates et al., in vol. C of mortgages, on pages 29 and 30.

John W. Bates to Russell Sage, in vol. N of mortgages, on page 22.

And the same have been carefully compared with said records, and contain the whole thereof.

In testimony whereof, I have hereunto set my hand this 18th day of December, 1860.

FRED. SCHLOOENIELCH,
Register, Milw. Co., Wis.

125 [Confidential.]

NEW YORK, 21*st May*, 1855.

DEARS EMMONS: Mr. Sage came here to-day to see me in regard to the Sweet judgments. Mr. Sweet had so far divulged matters that I had fully to define my position, as Mr. Sage did also his. There was no use in he and I coming into competition with each other, and an understanding has now been come to by Mr. Sage and myself (the particulars of which I will inform you on my return) that must be satisfactory to all concerned. He is to write Mr. Finch to-day to aid and assist in the purchase of the judgments, or those preceeding the last one of Holbrook, Corter & Co , and you can communicate with him on the subject. With the assistance of Finch & Butler you can, I think, manage to get, before I return, nearly, if not quite all, the judgments that are desirable. C. J. Vane has negotiations pending in regard to several, and will continue to act under your directions if you so wish. Sage will not move his suit until I return, and it will also be better to do nothing in the other suit until then. The judgments ought now to be got up at a low figure, and I hope you will see that all is done that can be done to accomplish this object. You need not at present say anything to Mr. Sweet about this. The assignments of all judgments will be taken for my account, as heretofore. This Mr. Sage understands and assents to. I am off to-morrow morning for Boston, and hope to sail Wednesday.

Remember me occasionally, fraternally, at the Golden Gate.

In haste, yours truly,

ALEX. MITCHELL.

N. J. EMMONS, Esq , *Mil.*

Objected

126 *Deposition of G. F. Place.*

CHARLES H. WHEELER
vs.
RUSSELL SAGE. } In equity.

For complainants.

Sept. 24, 1861, in open court, George F. Place, being sworn, says he knows the parties. Knows the handwriting of Russell Sage, the defendant.

The paper shown witness is in the handwriting of Russell Sage, until it says *less* expenses, $84 88. The balance is in Mr. Cary's handwriting, who was a bookkeeper for Sage & Co. in Troy, N. Y. I have no means of recollecting when I first saw this paper, except from the date of the paper. I presume there was a letter accompanying it. At the top of the paper is November 18, 1855. The paper is marked letter "A," and hereto annexed.

WITNESS. I was the bookkeeper of Wheeler & Co. at Milwaukee from the first of September, 1855, until after February, 1856. I recollect Russell Sage being in the office of Wheeler & Co. on the evening of the sale by the sheriff or the next morning.

Question by complainants. Were the accounts of the sale then made up and carried in the books of the firm?

(Objected by defendant's counsel as irrelevant and too late.)

Mr. Sage came down to the office, I think, on the morning of the sale. After Sage and my brother had figured in the wharehouse accounts some entries were made in the books by Sage's direction. They were afterwards found to be erroneous, and were crossed off. No final settlement were made at the time. Sage concluded no final settlement of the accounts of the sale at that time to my knowledge.

127 A book called Wheeler & Co.'s journal shown witness. I think the statement of settlement was made up in February, 1856, but was not carried on the books to September following. They were made or of the date of February 20th, 1856. The whole account settled is not stated on the books. Only the balances are shown. A copy of an account is here produced and annexed, marked "B."

Cross-ex'd.

WITNESS. That is a copy from a letter-press copy. It is Wheeler & Slocum's balance. These are copies of the accounts, marked "C," "D," "E," "F."

WITNESS. I am in the employ of the complainant at this time. Wheeler & Sage wanted the accounts closed. Did not here Sage give instructions to have the accounts made up. I think the accounts were made up a few days after Sage left. They were sent to Sage & Co. by letter. Subsequent entries prove the sanction of the parties to the accounts. These books have been kept here in Wheeler's possession. (A document annexed to the deposition of Alanson Sweet is here shown witness, purporting to be answers to interrogatories.) They are in my handwriting. I wrote them from the dictation of Alanson Sweet in the office of Wheeler & Co. I think it was in the

office. It must have been written at two or three different times. The direct was taken down by itself, and whether rest was taken at one time I do not recollect. There were persons in the office, but they had nothing to do with it. Wheeler *Wheeler* I do not think was present. Sweet came in the morning. It took me several mornings. I did not copy my portion of this from writings. Sweet had no papers in his hands is I recollect is to parts of it; and is to other
128 parts, I do not recollect. I think a part of the time he had some writings before him, or memorandum, occasionally. I did not see in whose handwriting they were in, nor did I read them. A majority of the time I was writing. Sweet might have had a paper before him. He gave me the numbers of the interrogatories as I wrote them. He might have taken them from a paper. I wrote in the words he gave me, occasionally correcting the grammer after speaking to him.

It is agreed by counsel that all the copies annexed be considered copies of originals. In open court.

"A."

Nov. 16, 1855.	Amounts of mortgage		$16,000 00
	4 years 8 mo. 16 days int., 12 per cent.		9,045 00
	Bill, taxes, warehouse repairs, ins. and int., at 12 per cent, old firm		4,057 92
			29,102 92
	Less.		
	4 years 2½ mo.s' rent warehouse, $2,000	$8,416 65	
	Paid sheriff and clerk's costs	137 71	
	" Finch & Lynde	350 00	8,904 36
			20,198 56
	Less expenses		84 88
			20,113 68
	⅓, Russel Sage	6,704 56	
	⅓, Hiram Slocum	6,704 56	
	⅓, C. H. Wheeler	6,704 56	20,113 68

129 "B."

Hiram Slocum to Russell Sage.	*Dr.*	*Cr.*
½ wharehouse prop., ac. rend. Sept. 1, '54	6,946 69	
Int. same, ending Nov. 16, '55	1,007 27	
½ wharehouse prop., ac. Nov. 16, '55	344 77	
½ Wheeler & Co., old firm, ac	1,630 91	
Your stock ac., Sept. 1, '55		8,366 25
Int. same, 5⅔ mos., ending Febr. 20, '56		474 08
½ wharehouse property, decree		7,855 10
Int. same, from Nov. 16, '55, to Feb. 20, '56, at 7 per cent		145 10
1856.—Feb. 20. Bal. due H. Slocum	6,910 89	
	16,840 53	16,840 53

Chas. H. Wheeler to Russell Sage.	*Dr.*	*Cr.*
⅓ wharehouse prop., ac. receiv'd Sept. 1, '54..	7,101 84	
Int. same, ending Nov. 16, '55.....	1,029 76	
⅓ wharehouse prop., ac. Nov. 16, '55.....	344 77	
⅓ Wheeler & Co., old firm, ac.....	1,630 92	
⅓ wharehouse prop., decree.....		7,855 10
Int. same, from No. 16, '55, to Feb. 20, '56..		145 10
Balance chg. your stock ac.....		2,107 09
	10,107 29	10,107 29

7,101 84	7,855 10
1,029 76	145 10
344 77	
	8,000 20
8,476 37	
8,000 20	
476 17	

130 "C."

Wheeler & Co., old firm, to Wheeler & Co., new firm.	*Dr.*	*Cr.*
Balance, Aug. 31, 1855.....	2,472 81	
Milwaukee harbor ac., to balance.....	25 00	
Rebats of interest, as advised, Sept. 22, 1855,	162 13	
Menomone Loco. Man. Co., stock ac.....	1,000 00	
T. P. Williams's contract, as ent. up.....	1,000 00	
	4,659 94	
Interest same, 5⅔ mos., ending Feb. 20.....	264 06	
W. Baker, note per R. Sage & Co., ac. rend'd	537 60	
Int. same, do. do.....	46 29	
Wharehouse insurance, years 1851, 1852, and 1853.....		375 00
Int. same, $136 50 and $5 62.....		142 12
Difference in taxes, as paid, and final settlement.....		67 45
Int. same.....		30 58
Balance.....		4,892 74
	5,507 89	5,507 89

Russell Sage, ⅓ is.....	1,630 91
Hiram Slocum, ⅓ is.....	1,630 91
Chas. H. Wheeler, ⅓ is.....	1,630 92
	4,892 74

Milwaukee property, settlement mortgage....	16,000 00	
4 years 8 mos. and 16 days int., at 12 p. c....	9,045 00	
Bill, taxes, insurance, and wharehouse repairs,	6,973 27	
Int. from Oct. 1, '55, to Nov. 16, '55.....	174 32	
Bill, wharehouse repairs, from Sept. 1, 1855..	277 07	
Wharehouse rent, 4 years 2½ mos., at $2,000..		8,416 65
Sheriff's fees and clerk's costs.....		137 71
Finch & Lynde.....		350 00
Dicted Nov. 16, 1855.....		23,565 30
	32,469 66	32,469 66

Russell Sage, ⅓ is.....	7,855 10
Hiram Slocum, ⅓ is.....	7,855 10
C. H. Wheeler, ⅓ is	7,855 10
	23,565 30

131 "D."

"D." *Brick wharehouse property to Wheeler & Co., Dr.*

		Yrs.	Mos.	Days.	Inter't 12 p. ct.	
1851.						
Sept. 11	Fire prem's $10,000, "wharehouse"	4	—	12	60 50	125 00
1852.						
Feb. 8	Taxes year 1851, lots 5, 6, & 7, B. 54...	3	7	25	109 15	249 78
Aug. 31	Wharehouse repairs, year ending date...	3	1	—	91 10	246 22
Sept. 18	Fire prem's on $10,000, "wharehouse"..	3	—	12	45 50	125 00
1853.						
Jan. 17	Paid taxes, per bill.....	2	8	13	98 73	304 63
" 31	" " redemption certificate.....	2	8	—	404 68	1,264 23
Aug. 13	Filling lots 3, 5, & 8, B. 55, & lots 11 & 12, B 35.....	2	1	17	148 21	579 75
" 31	Wharehouse repairs, ending date.....	2	1	—	46 69	186 77
Sept. 18	Fire prem's on 10,000, "wharehouse"..	2	—	12	30 50	125 00
1854.						
Aug. 31	Wharehouse repairs, ending date.....	1	1	—	35 10	270 00
Sept. 18	Fire prem's on 10,000, "wharehouse"..	1	—	12	17 17	138 50
1855.						
Jan. 17	Redemption certificate 1853.....					570 35
" "	Taxes year 1854.....	—	8	13	105 58	682 28
March 7	Redemption certificate lot 3, B. 35, 1851 & 1852	—	6	23	64	9 50
July 28	Filling lot 3, B. 35.....	—	2	2	6 36	308 45
Sept. 1	Wharehouse repairs, ending date.....	—	1	—	3 95	395 20
" 18	Fire prem's on $10,000, "wharehouse"..	—	—	12	75	188 00
						1,204 61
						6,973 27

132 "E."

"E." *Hon. Russell Sage to Wheeler & Co.*

	Dr.	Cr.
Wheeler & Co., old firm, ac., to balance	4,892 74	
This am't, per Milwaukee prop. ac	615 15	
Wharehouse repairs, ending Feb. 20, '56	277 07	
Sage *vs.* Sweet ac., to balance	99 63	
This am't, per Mil. propt. ac., insurance, &c, 1854 & 1855	349 32	
Hiram Slocum, stock ac., to balance		8,366 25
Chas. H. Wheeler, do., chg'd this am't		2,107 09
Wharehouse rent, 2½ mos., ending Nov. 16		416 67
Balance, crt. R. Sage & Co	4,658 10	
	10,890 01	10,890 01
Wheeler & Co., journal entries, Feb. 20, 1856:		
Wheeler & Co., old firm, to sundries	2,264 06	
Menomone Man. Co. stock, to balance		1,000 00
G. D. Norris & W. B. Hibbard, ass. D		1,000 00
Profit & loss int. &c., per ac'ts		264 06
R. Sage & Co., to sundries	6,231 91	
Wheeler & Co., old firm, per Milwaukee prop. ac., 615 15; old firm ac., to balance, 4,892 74		5,507 89
Sage *vs.* Sweet, ac., to balance		97 63
Wharehouse repairs ac., do. ending Feb. 20, '56		277 07
Profit & loss, int. &c., per acc'ts		349 32
Sundries, to R. Sage & Co		10,890 01
Hiram Slocum, stock ac., to balance	8,366 25	
Chas. H. Wheeler, " " " this am't	2,107 09	
Expences ac., rent wharehouse, 2½ mos	416 67	
Sundries to R. Sage & Co		668 77
Wheeler & Co., old firm, Wm. Baker, note and int	583 89	
Sage *vs.* Sweet, R. Sage, expences as rend'd	84 88	
	20,054 75	20,054 75

133 "F."

"F." *Milwaukee property to Russell Sage.*

Wharehouse fire insurance, 1851, 1852, & 1853...		375 00		
Inst. same, ending Oct. 1, 1855	60 50			
	45 50			
	30 50			
		136 50		
" " " Nov. 16, 1855		5 62		
Difference in taxes paid & bill sold.....	249 78			
	182 33			
		67 45		
Int. same from Feb. 5, '55, to Nov. 16, 1855.....		30 58	*Dr.*	*Cr.*
			615 15	Old firm.
Wharehouse insurance, 1854 & 1855		326 50		
Int. same, ending Oct. 1, '55.....	17 17			
	75			
		17 92		
" " " Nov. 16, '55.....		4 90		
			349 32	New firm.
Tax bill.....	570 35			
	682 28			
	9 50			
	308 45			
		1,570 58		
Wharehouse repairs, ending Sept. 1, '55.....		395 20		
			1,965 78	New firm.
Int. same, ending Oct. 1, '55.....	105 58			
	64			
	6 36			
	3 95			
		116 53		
" " " Nov. 16, '55		29 49		
			146 02	New firm.
Wharehouse repairs, from Sept. 1, '55, to Feb. 20, '56			277 07	"
Wheeler & Co. ac., Sage *vs.* Sweet, costs			12 75	"
Expences ac., per bill, Feb. 23, 1856.....			84 88	"
Wharehouse rent, 1 year 2½ mos., *a* $2,000.....				2,416 67
Balance Nov. 16, 1855.....				1,034 30
			3,450 97	3,450 97
Russell Sage, ⅓ is			344 77	
Hiram Slocum, ⅓ is.....			344 77	
Charles H. Wheeler, ⅓ is			344 76	
				1,034 30

1019

134

Messrs. Sage, Wheeler & Slocum to R. Sage & Co., Dr.

1855.	Oct. 23, pd.	R. Sage expenses Mil. and back.....	25 00
	Nov. 20 "	do do	25 00
		pd. telegraph from N. Y. to Mil.....	1 25
	Dec. 4, pd.	Morse's telegraph bill.....	3 63
1856.	Feb. 23, pd.	R. Sage expenses Mil. and back.....	30 00
			$84 88

Chg'd W. & Co. in ac. this date.

R. SAGE & CO.,
Pr. CARY.

TROY, *Feb.* 23, 1856.

TROY, *Sept.* 1*st*, 1854.

Mr. Charles H. Wheeler to Russell Sage, Dr.

For one undivided third of property in Milwaukee, as per agreement.....	6,000 00
For ⅓ taxes and repairs, and int. on same to date, as pr. statement herewith.....	1,101 84
	$7,101 84

TROY, *October* 22, 1854.

DEAR SIR: No letters since the 16th date from you. No new feature in market, except that barley has gone so high that the brewers and malsters are trying to break down the price of it. I think it somewhat uncertain whether it will remain where it is; but it is not going to be low; this you may rely upon. I think well of selling all of your purchases this month, except enough, at the last end, to comply with Benson's contract. Wheat and flour keep along as previously advised. I should dare to buy for winter at anything like present prices, but do not feel much apprehension for this fall's delivery. I have nothing to add about beef from my letter of
135 yesterday, and write to-day more to say a word or two about the warehouse and lots than anything else. You say you think it worth 50,000. If you are right in this, it is very important that we get B deed as soon as we can legally, and of this you must take counsel. Finch promised to write me about this matter on his return home, but has not done so yet. Sweet's debt could be bought low, I have no doubt; still B deed would be in the way and must first be removed, and then, if Finch thinks it best to buy any of these debts, we can then decide what is best to do. I suppose if the suit against Blossom & Sweet—creditor's lien—was out of the way, the deed could be made out, and everything secured at once.

As soon as you get time see Finch, and write. The taxes, I believe, you have paid in Horace name.

If the pressure in the money market continues as it now is, it will be no object to do much business there after close of navigation, unless you can get a very large margin indeed, as I see no prospect of an improvement for months to come.

Best notes sell at 1½ per ct. per month in Wall st.; so you see what it costs to carry on business for borrowers. I am trying to get time to deliver our 400 bbls. beef from our new beef, and hope to succeed. You will of course ship it as fast as you can get it from the packing house; the same with all other property, as I like to have these things closed as we go along.

I am in nomination again, and have two opponents, which makes it very easy for me thus far; in fact, I have not spent a day in attending to the campaign since I was nominated, and from pres-
136 ent appearances shall not be required too. I would not have taken a renomination but for the position I took and occupied on the Nebraska question last session. Still it is a high and honorable position for a man to occupy that has any taste for public life. What is brother Daniel doing, or rather what is his constituents doing with him, as well as Macy?

Yours, truly, in haste,

RUSSELL SAGE.

To CHAS. H. WHEELER, Esq.,
Milwaukee, Wis.

Have Mr. Place make out general account as soon as he can after getting Mr. Cary's account, which he thinks he will have ready tomorrow. You see by statement of property on hand that nearly all of our wool is unsold, which makes a heavy amount to carry in unsold property.

The money sent from Com. B. K., Albany, is marked to A. Mitchell, esq., outside, and inside wrappers for Wheeler & Co.

NEW YORK, *May* 21, '55.

C. H. WHEELER, Esq.:

DEAR SIR: I have concluded an agreement with Mr. Mitchell, in relation to our foreclosure, on the terms you proposed to him, to wit: We to pay him $10,000 on perfecting our title, which is to be done by letting the suit go over until his return, in August, when he will so arrange matters with other parties that we can get our decree, and perfect sale. *But to do this, you must keep this entirely to yourself*, except to say to Finch that you believe Mr. M. and I have made
137 some arrangement about it. There is another matter to be got out of the way before the sale, and that is that memorandum or agreement with Bishop & Co. Blossom agreed to cancel it and deliver it up last summer, but never did so. Keep this, also, to yourself. Treat Sweet kindley. Now, as to the renting of the warehouse, I hardly know what to advise. If you are committed, why, we shall have to adhere to it. Write me on this point. My fears are that if it is known you get $4,000 rent, it may embarrass us in the foreclosure. Our beef, hams, and beef are in. Have sold the hams—$20. Beef to be immediately inspected for the navy. The Eagle

flour is not as good as I expected, nor is it *branded as I* supposed it would be. It should have been a *circle brand* with your name within, Milwaukee on it, so that *it could* have been sold for Michigan or Ohio. The flour appears to have been ground flat and close; so says Thorne. Our millers at Troy would have got a bbl. of flour out of $4\frac{5}{0}$ bus. wheat, and the offal would have more than paid for grinding. If you have any more winter wheat, *shipp it;* do not grind it. Thorn has sold 256 bbls. at $10\frac{3}{8}$ to $10\frac{1}{2}$. Common flour sells for $9\frac{7}{8}$ to $10. The prices rule very near together; but when the mills near by here begin to grind spring wheat, I think there will be more difference in prices. I shall sell or grind our spring wheat. It will pay better in flour than in wheat, but less trouble in wheat.

Markets are firm, and prospects good for its continueing. Hope you will be able to shipp our property along very soon. Rye is firm, and rye flour is so high that we shall get a very high price for our rye.

Very truly, in hate,

RUSSELL SAGE.

138 ["Private."]

TROY, *May* 23, 1855.

CHAS. H. WHEELER, Esqr.:

DEAR SIR: Your letters of the 18th and 19th are before me. I will endeavor not to get caught with musty flour; but the truth is, this kind of flour sells better in comparison than the better qualities. I am having most of our wheat brought through by R. R., and shall either sell or grind it immediately. I see nothing to prevent our getting high prices either way. You need have no fears of flour, wheat or rye. I would not sell our rye at anything like 1 20 or 1 25. I hope to make it bring us over 1 60 here. Canal freight here is not now, nor will not be during the summer, over 12 to $12\frac{1}{2}$c. and $13\frac{1}{2}$ to 14c. on wheat. I think you had better keep along in the market, for wheat and rye at about your going rate. I think I can make an extra article of Genesee out of your white winter. At any rate send it along and I will try it.

As to the warehouse suit, would say we cannot hurry it. I think my arrangement with Mitchell will succeed. In that I was to write Finch to have him co-operate with Emmons to have the judgment bought up at 25c. I have written Finch accordingly. If Finch thinks he can get them better for me than Emmons, very well; for it will make no difference in the end between Mitchell and myself, as this was the agreement. You can readily see that with this arrangement, we shall be quite sure to succeed, with Mitchell at home. At any rate, we shall get a large and full decree, which we could not get without this, and with the judgments in our own hands, it is
139 almost a certainty that we shall get through just as we expect to. As to the renting of the warehouse, would say I think it would have been better to have kept along as we are, until we got a decree and sale; and should prefer it now, if you can arrange with your man. If you cannot, then you must do the best thing you can,

and keep as quiet as you possibly can. I think the least said the better; Mitchell will put all right with Sweet.

I am glad you are going to shipp along *along* our property; canal freights are low, and are going to remain low.

I will send you $5,000 currency to-morrow.

Yours truly,

RUSSELL SAGE.

Our 1,400 bus. wheat got in on Monday, and of course was sold at 2 22, as previously advised. Rye sold at 1 67½ here.

TROY, *June* 6, 1855.

C. H. WHEELER, Esq:

DEAR SIR: You are right in your impressions about Bishop & Co. contract. Blossom solicited me to cancel the contract, and I agreed with him to do it, about the time you was with Mr. Slocum; Blossom and myself in New York. I do not think the bond amounts to anything, but it had better be got up, and when Bishop calls I will explain it, so that I think he will give it up immediately. In the mean time if you can say a word to help it along, do so. I think different from friend Finch, about my arrangement with Mitchell. The 140 more I think of it the better it appears to me for the securing of the property.

Yours, truly,

RUSSELL SAGE.

TROY, *June* 7, 1855.

CHAS. H. WHEELER, Esqr.:

DEAR SIR: I herewith enclose copy of cross-bill in the Sweet matter, which Messrs. F. & L. sent to me to answer. You can read my letter to them, and then take it and the bill to them; prepair an answer for me to sign, and forward it to me, and I will sign and acknowledge the same. I do not see that the Bishop & Co., or your matter, is to hurt anything; on the contrary, strengthen my claim, as it shews I was willing to sell to them and to you, at the face of the mortgage, and the charges made on the property, &c. If Finch can aid Emmons to get any of the Sweet judgments, hope he will do so, as it would be strengthening me to foreclose.

I see the markets to-day in N. Y. were very dull. It has been the rainest day of the season, and it is not yet over. I look for lower prices for the next ten days, when I think a reaction will take place; still, buy at a fair margin or not at all.

I wrote you some days since about Rufas. If you can give him employment, and he will work, should like to have him have it, or aid him to get a place elsewhere. He writes to his brother, professing to be very sorry that he has conducted himself as he has there, but you know best about the sincerity of his professions.

Very truly, yours,

RUSSELL SAGE.

1023

141 TROY, *Feb'y* 23, 1856.

Messrs. WHEELER & Co.:

GENTLEMEN: I reached here this morning. In order to have our books agree, I think it best to have George make out a copy of all the entries made on your books by Mr. Place in relation to warehouse, &c. This will enable Mr. Cary to make his entries right here.

Mr. Cary has a bill of ch'gs of my expenses, &c., which he will enclose with this, ⅓ of which he has charged to Mr. Slocum, and shall close his ac't. I found in Chicago that the stock of wheat on hand there is 120,000 bus. No rye or corn worth nameing. I also learnt that the vessels lying there for grain freight, on the opening, were capable of taking 1,500,000; and the opinion there was that freight would rule low.

If Roddis would take 8¾ for 100 bbls. prime lard on, say, 60 days, would advise buying it. I offered him 8½; he said he thought you would pay 9. I would give him 9 cts. on 3 mos., if you cannot do better.

Markets continue to be quoted dull and prices declining; still, I feel quite confident of an improvement for wheat and flour before the 1st day of May.

I have been thinking Haskins's matter, and you may say to him I will loan him $15,000 on 2 years, at 12 pr. ct. int. by his
142 taking of me, at par, 2 second mortgage bonds, for $1,000 each, of the Lake Erie, Wabash, and St. Louis R. R. Co., and $1,000 of the capital stock of the same. The road runs from Toledo to Danville, Illinois, and there connects with Great Western R. R. that runs to St. Louis, connecting with Illinois Central, its Chicago branch, &c. Over $1,000,000 of this stock was subscribed and paid in by Alabanians, including Mr. Corning, who took $100,000. It is now completed 150 miles, and will be completed by 1st June 242 miles, costing about $8,500, over 3,000,000 of which is in stock of the ablest and wealthiest stockholders of any similar R. R. Co. in the country. It is believed by all of its friends that the stock will pay 10 per ct. The bonds are 7 per ct., payable in the city of New York. I should have no hesitation in guaranteeing their payment if he should desire it. They have ten years to run from 1st Augnst, I believe, 1855. If he thinks favorable of this proposition, I can send him a printed report of the board.

I will say in connection that Mr. E. D. Morgan, E. C. Litchfield, Mr. Brady, and some half dozen other gentlemen, took $500,000 of these bonds near a year ago at 75; and since that time over $1,000,000 more has been expended on the line.

If he should accept my proposition I will give directions to have the property's title looked after by Finch & Lynde.

I enclose a copy of ac. as given to Mr. Slocum, so that you can see how it is closed.

143 I see, by to-day's paper, that we have three days later news from Europe, and that breadstuffs still continue to droop.

It may be well to step aside for a while and look on.

Yours, truly,

RUSSELL SAGE.

Now that the warehouse business is closed, I want you to enclose our agreement to sell you one undivided one-third of the mortgage against Sweet. You can mark across its face, canceled and void.

Defendant's testimony.

And at the hearing of said cause the following testimony was read in evidence on the part of the defendant:

144 *Defendant's testimony—Deposition of L. Ward.*

CHARLES H. WHEELER
vs.
RUSSELL SAGE.

District court of the United States for the district of Wisconsin.—In chancery.

Whereas the deposition of Lyndsay Ward was taken, by consent, before James Mitchell, a commissioner, it is stipulation that the same may be read at the hearing, in as full a manner as if taken before a commissioner of this court, all objection to the character of Mitchell being hereby waived.

FINCHES, LYNDE & MILLER,
Solic. for Complainant.
JAMES S. BROWN,
Of Counsel for Defendant.

AUGUST 5TH, 1861.

District court of the United States for the district of Wisconsin.—In equity.

CHARLES H. WHEELER, plaintiff,
versus
RUSSELL SAGE, defendant.

Lyndsay Ward, called on behalf of the defendant, and being duly sworn deposes and says: I reside in Milwaukee; I have resided here since 1838. I know the parties to this suit, except Mr. Slocum.

Ques. Do you remember the occasion of a sale which took place in the court-house in Milwaukee in February, 1856, under the Sage foreclosure, so called, and where, amongst other property, that known as the Sweet wharehouse was sold?

145 Ans. I remember of being at the court-house at the time of that sale.

Ques. How happened you to be there, and what was the occasion of your attendance.

(Objected to, as incompetent and immaterial, by plaintiff.)

Ans. I had had some talk about buying the property before that, and went up to see how it was going.

Ques. With whom had you had talk about buying the property?

(Objected to, as above.)

Ans. With Mr. Charles H. Wheeler.

Ques. Had there been, prior to that sale, between you and Mr. Wheeler any talk about buying that property together on joint account or together? If so, state as nearly as you can the substance of what transpired.

(Objected to, as above.)

Ans. I think Mr. Wheeler came to me and told me that that property, he thought, could be bought at a bargain; he asked me if it could be got at a bargain, if I would go in with him and buy it. I think he and I agreed upon a price together—an offering price and a price one would ultimately give. I think he did all the talking there was done about it, but we did not succeed finally in making a trade to buy the property.

Ques. Was it in consequence of what Mr. Wheeler had said to you that you were induced to attend the sale?

(Objected to, as above.)

Ans. I think it was.

Ques. When you say that you did not succeed in making a
146 bargain, a bargain with whom do you mean?

Ans. A bargain to buy the wharehouse. I don't recollect of having any conversation with any other parties except Mr. Wheeler.

Ques. Do you know whether Mr. Wheeler applied, on the subject of your contemplated purchase to Mr. Mitchell, or did he tell you that he had applied to him?

(Objected to, as above.)

Ans. Mr. Wheeler told me that he had applied to Mr. Mitchell; it may be possible that I talked to Mr. Mitchell myself about it, but I don't recollect.

Ques. When you spoke of not being able to make a bargain, did you mean that you were not able to conclude a bargain with Mr. Mitchell on the subject?

(Objected to, as above, by plaintiff.)

Ans. I think Mr. Wheeler told me that Mr. Mitchell told him that he (Mitchell) could not sell the property at that time, until after the sale; I and Mr. Wheeler had a perfect understanding, but it was with Mr. Mitchell. We could not come to an agreement.

Cross-examination.

1 cross-int. Where was this conversation with Mr. Wheeler, and who were present?

Ans. I can't tell you who were present; we had a good many conversations. I think it was in the Mutual Insurance office; it was there I used to spend a good deal of my time.

Ques. May you not be mistaken as to the time of these conversations, and may they not have been subsequent to the sale?

147 Ans. I think not; I think it must have been before the sale; the reasons for thinking so are that I had a talk of buying the property before that. That is my strong conviction.

Ques. How many conversations had you and Wheeler had before the sale, on that subject?

Ans. I can't tell the exact number; I had a number of them, and, as I told you before, the only reasons for thinking it was before the sale is because I drew the conclusion that that induced me to go to the sale.

Ques. What sum had you and Wheeler agreed that you would pay for the property?

Ans. $35,000 for the wharehouse property and some other lots across the road from the wharehouse; I don't remember exactly.

I was up at the court-house the day of that sale; Mr. Mitchell and Mr. Sage were there. I think there were quite a number of persons present; I don't remember all; I don't recollect who were these all. I think Mr. Emmons and Mr. Van Dyke were there; Mr. Emmons, I am very sure was there. I did not bid upon that property then. I do not remember who made the sale; the sale was in 1856, I think; I can't tell what time; some time early in the season, I think. I should think there were a dozen persons, perhaps, at the sale. I had not been to examine the property specially, before the sale. I was well acquainted with the property, and with what I thought to be the value of it.

148 *Direct examinations resumed.*

I do not recollect whether Mr. Wheeler was present at the sale or not.

LYNDSAY WARD.

Further examination adjourned until the 28th day of June, 1861, at 7½ o'clock p. m.

JAMES MITCHELL,
Circuit Court Commissioner, Mil. co., Wis.

Deposition of Lyndsay Ward, taken before James Mitchell, circuit court commissioner, Mil. co., Wis.

Deposition of Alex. Mitchell.

In the district court of the United States of America for the district of Wisconsin.

CHARLES H. WHEELER
vs.
RUSSELL SAGE.

Deposition of Alexander Mitchell, a witness on behalf of the def't, in the above-entitled action, taken pursuant to a stipulation between the parties, before Francis Bloodgood, one of the commissioners of this court, on the 1st day of July, 1861, before the said commissioners, at his office in the city of Milwaukee, came the defendant in person, accompanied by M. H. Carpenter and H. M. Finch, esqs., his counsel,
and the defendant accompanied by N. J. Emmons, esq., his
149 counsel, and the said Alexander Mitchell being called by the defendant, and being first duly sworn by the commissioners, did testify and depose as follows, viz: I have been examined in this case before on the behalf of the plaintiff, before W. S. Carter, one of

The commissioner remarked to me that he could not take a memorandum and copy from it; that I must make the statement myself, and he would write it down. I accordingly read to him from this memorandum, and he, after correcting the phraseology and language in some instances to put it in legal and intelligible form, and in other instances rejected on account of irrelevancy, according to his knowledge of what we were doing, wrote down the answers. I accordingly pursued the same course, from day to day, until all the direct and cross-interrogatory were gone through with, as stated. I made this memorandum without consulting or referring to any other documents, memorandums, or instruments of writing whatever, save the
93 questions contained in this commission, and in one instance referring to Slocum's complaint *vs.* Sage, in a suit in Troy, N. York, in 1860. These memorandums were written down by a young and myself in a room alone, apart from all others, I dictating, and he writing in accordance with my dictation. The answers, as taken by the commissioner, will not exactly conform to the wording of this memorandum in all respects, but the substance contained in the answers, as written by the commissioner, I believe to be very near the same as contained in this memorandum. I therefore file this memorandum with the commissioner, to be attached to the commission for the benefit of the parties concerned, as required by the 33d and last cross-interrogatory.

UNITED STATES OF AMERICA,
District of Wisconsin, ss:

We, Francis Bloodgood and Winfield Smith, commissioners duly appointed to take depositions of Alanson Sweet, hereto annexed, in a certain suit depending in the district court of the United States of America for the district of Wisconsin, in equity, wherein Charles H. Wheeler is complainant, and Russel Sage is the defendant, do hereby certify that this exhibit is the memoranda made by the said witness referred to in his answer to the 31st cross-interrogatory, and delivered up by him to us, said commissioners, to be annexed his said deposition, and which has been by us accordingly annexed to
94 his said deposition. In tesimony whereof, we have hereunto set our hands and affixed our seals this 2d day of April, 1861.

FR. BLOODGOOD,
WINFIELD SMITH,
Commissioners.

Deposition of D. C. Reed.

Be it remembered that on the 9th day of May, 1860, at Milwaukee, in the district of Wisconsin, personally appeared before me, Walter S. Carter, a commissioner appointed under the laws of the United States to take affidavits and acknowledgements of bail, Charles H. Wheeler, and made oath that he, the said Charles H. Wheeler, was complainant in a suit then depending in the district court of the United States for said district of Wisconsin, wherein Russel Sage was defendant; that the testimony of Duncan C. Reed was material and necessary for him, the said complainant, in the prosecution of said suit; that he,

the said Charles H. Wheeler, was informed and believed that said Reed was about to go out of the said district of Wisconsin, and to a greater distance from the place of trial of said cause than one hundred miles; that he, the said Charles H. Wheeler, was informed and believed that said Reed would depart from said district of Wisconsin before the time of the trial of said cause, and the said Charles H. Wheeler requested that the said Duncan C. Reed might be examined, according to the act of Congress in such case made and provided. Whereupon I ordered that the said Duncan C. Reed should be examined *de bene esse* before me, at my office at the city of Mil-
95 waukee, in said district, on the 18th of May, 1860, at two o'clock in the afternoon, and that three days' notice should be given to the said Russel Sage of such examination to the end that he might, if he saw fit, be present at the examination and put interrogatories; and I having satisfactory proof that such notice had been given, and the said parties having appeared before me, by consent, on this 16th of May, 1860, I have therefore proceeded with said examination; and the said Duncan C. Reed, being carefully examined, and cautioned, and duly sworn to tell the truth, the whole truth, and nothing but the truth, testified and said:

I reside in Milwaukee; I am going to leave Milwaukee, and am going to Kansas Territory next Monday; I do not expect to return to Milwaukee this year; I know the parties in this suit; I have known them since 1851; in the fall of 1852 I was in the employ of Charles H Wheeler & Co. The firm was composed of Charles H. Wheeler, Russell Sage, and Hiram Slocum.

Question. Who was the party managing the business here?

Mr. Emmons, for the defendant, objects on the ground of irrelevancy.,

Answer. Charles H. Wheeler.

Mr. Russell Sage resided at that time at Troy, N. Y. The firm of Charles H. Wheeler were doing business in Milwaukee, in the brick wharehouse known as the Sweet wharehouse, in the 5th ward of the city of Milwaukee, and now occupied by Kellogg & Strong.

Question. What was the nature of the business of the firm?

(Objected to by Mr. Emmons, for the defendant, as immaterial.)

Ans. They were in the general produce and forwarding business; they bought pork, beef, wheat, wool, &c.

96 I was in the city of Troy, New York, about the last of November, 1852, with a drove of hogs; I then and there saw the defendant, Sage; I had a conversation while in Troy with regard to the brick wharehouse in Milwaukee.

Question. State what that conversation was.

(Objection made to the above question by Mr. Emmons, for the defendant, on the ground of irrelevancy and immaterially.)

Answer Sage asked me what that property was worth; went on and described it. He described the four lots where the brick wharehouse stands, on the river, in the 5th ward of this city, and some lots fronting on Oregon street, also in the 5th ward, and, it seems to me, a piece of land that lay in town of Lake, in this county, but now lying in this city. He said the property he described was property

he had a mortgage on from one Alanson Sweet. He asked me what the property was worth. I told him sixty thousand dollars. He said he expected he should have to foreclose that mortgage; if so, he should buy it in for the benefit of the firm of Wheeler & Co. I think the firm was R. Sage & Co., in Troy, and Wheeler & Co., in Milwaukee. This conversation was, a part of it, in Sage's office, in Troy. Mr. Slocum was present there in the office; and part of it at a place called the "St. Charles," an eating-house, I think.

Question. Did he say anything to you at that time, and during that conversation, about making any negotiations with Mr. Sweet in relation to that mortgage and the property?

(Mr. Emmons, for the defendant, objects to the question as irrelevant and immaterial.)

Answer. Sage asked me if I thought Sweet would fight off the suit if he commenced? I told him I didn't know whether he
97 would or not. He then asked me to talk with Sweet about it when I went home. I told that I would. I then said to Sage, I supposed you had a quitclaim deed from Sweet for all that property, on the ground of the extension given him; he said, as I understood him, that he had a quitclaim deed; this was all the conversation at that time.

I saw Mr. Sage in this city in 1853. He then asked me what Sweet said to me about fighting the suit. I told him he would oppose it, but I thought that Wheeler could settle with him by paying him about ten thousand dollars, which he said he was willing to give then in October, 1855. I saw Mr. Sage here again; he then said that he had commenced the foreclosure suit and had settled the matter, and sold one-half of the property described in the mortgage to Hiram Slocum, and that him, Sage, and Slocum had sold one-third of the whole entire property to Charles H. Wheeler, and that he, Sage, was to bid the property in the day it was sold.

(To the foregoing fifteen lines of the testimony of the witness objection was duly made on the ground of irrelevancy, immaterially, and incompetency.)

Question. Do you know, of your own knowledge, that Mr. Sage then held a quitclaim of the property from Mr. Sweet, or do you know it from the statements of Mr. Sage?

(Objection, because of irrelevancy, and because the deed itself was the best testimony of the fact sought to be proven, made by Mr. Emmons for the defendant.)

Answer. I only know it from the statements of Sweet and Sage themselves I knew it in no other way From their statements I knew that their was.

98 Question. Did you at that time have any other conversation with the defendant, Sage, with regard to the foreclosure of that mortgage?

(Mr. Emmons, for the defendant, objects on the ground of irrelevancy, incompetency, and immateriality.)

Answer. I did. They were to pay Sweet ten thousand. This was said at the conversation had with Sage in October, 1855.

Question. Do you know when those premises were sold under the decree of foreclosure?

(Objected to by Mr. Emmons as irrelevant, immaterial, and incompetent.)

Answer. I do.

Question. Did you have any conversation, after the sale, with Mr. Sage in relation to the mortgage, or the property mentioned in the mortgage? and if so, state what that conversation was.

(Objected to by Mr. Emmons on the ground of irrelevancy, immateriality, and incompetency.)

Answer. I think I had no conversation with Mr. Sage concerning the property after the sale.

Question. When Mr. Sage talked with you about Sage's paying the ten thousand dollars to Sweet, what did he state was the reason of making that payment to Sweet?

(Objected to on the same grounds as above, and, further, that the question is leading.)

Answer. I don't think he gave me any reason at that time.

Question. Did Mr. Sage state in that conversation how the ten thousand dollars was to be made up?

(Objected to for the reasons last above stated.)

Answer. Yes sir.

99 Question. What did he say on that subject?

(Objected to on the same ground as last question.)

Answer. He said that the firm of Wheeler & Co. could buy up Sweet's paper to pay it with for about two shillings on the dollar, I think he said I think I have had no conversation with Mr. Sage concerning the property, save what I have already stated, although I have had good many talks with him. I was at Troy with a drove of hogs for the firm of Wheeler & Co. I was there twice that fall and winter with hogs, and there the next spring with a drove of cattle.

The witness being cross-examined by Mr. Emmons, testified and said:

I was employed by Wheeler & Co. in the capacity of doing anything and everything in their line of business, and particularly in attending to the wharehouse, caring for the machinery, attending to shipments of grain, &c.

Question. What was your salary in 1852?

(Objected to by Mr. H. M. Finch, of counsel for the complainant, as irrelevant and immaterial.)

Answer. I am not certain whether my salary was fixed in 1852 or not. I think it was six or seven hundred dollars, and it was increased along until I was to receive a thousand dollars a year. I think my salary increased two hundred dollars at first; this was in 1853, and the next year to a thousand; I think this was it. I cannot tell what my salary was in 1852 without looking at my books; my impression is 'twas six hundred dollars. I have a tolerable good memory, Mr. Emmons.

100 Question. You were examined yesterday as a witness in the case of Alanson Sweet, against Alexander Mitchell and others;

is your memory in regard to the conversation which you have here testified to as having occurred with Mr. Sage any better or clearer than your memory of the transaction of which you testified yesterday?

(Objected to by Mr. Finch as irrelevant and incompetent.)

Answer. Yes, sir.

Question. The transaction about which you testified yesterday were, for the most part, matters in which you had been at one time personally interested, were they not?

(Objected to, same as to last question, by Mr. Finch, for complainant.)

Answer. No, they were not; some of them were, but not most of them. I have no interest in this suit or the subject-matter of it, and never have had. When I commenced in the employ of Wheeler & Co., Wheeler told me to always keep memorandums of all requests that either of the partners might make of me, or of any conversation of any importance, either in making contracts, or anything of interest in their business; so that I kept notes of different dates and conversations all the time I was in their employ, and I did not keep any in the other cases you spoke of.

Question. What reason, if any, was assigned by Mr. Wheeler for your keeping such memoranda?

101 Answer. That one of his wheat buyers made a bargain with a man for some rye; lent him some bags to bring the rye in with, and didn't take the man's name or the place he lived in. It was considerable time before he got track of the bags; they finally came into the Mississippi depot, and the rye was sold to any other party; this was the reason that Wheeler gave for requiring me to keep memoranda of conversations with his partners. I adopted the suggestion right off.

Question. Did you make a memorandum of the conversation you had with Mr. Sage, in Troy, N. Y., concerning which you have testified, and when and where?

Answer. I did; I made it at the hotel where I stopped in the city of Troy; I made it in November, 1852, when that conversation was; I made it in a memorandum book that I carried; that memorandum book is at home.

Question. Can you produce it?

Answer. Yes, I can.

Question. Will you produce it?

Answer. No, I will not.

Question. How long since you have looked at that memoranda?

Answer. Four or five days; it was since I was aware I was to be examined as a witness in this case.

Question. Did you make memoranda of the other conversation had by you with Mr. Sage, concerning which you have testified?

Answer. Yes, sir.

Question. Were they in the same book?

102 Answer. No, sir, they were not.

Question. In what were they made?

Answer. In a little memorndum book I carried, and they were made in the office of Wheeler & Co.

Question. Where is that book?

Answer. I have got it in my possession.

Question. When did you make the memoranda last referred to?

Answer. In the fall of 1855.

Question. When did you last see and refer to such memoranda?

Answer. During the last four or five days.

Question. In the testimony which you have given here, have you relied upon such memoranda (I now refer to all the memoranda about which you have spoken) to refresh or guide your memory in relation to the conversation you have spoken of?

Answer. I think that is best known to myself.

Question. Do you refuse to answer the last question?

Answer. I did answer your last question.

Question. Do you decline making any further answer to it?

Answer. Yes, sir, I do.

Question. Can you produce the memorandum book last spoken of by you?

Answer. I decline answering any more of those questions.

Question. I observed, Mr. Reed, that during your direct examination you had before you some manuscript in pencil, to which
103 you were apparently referring in framing your answers to direc interrogatory: what paper was that manuscript?

Answer. It was a piece of white paper.

Question. Was there not writing upon that paper? and did you not refer to it during your examination?

Answer. That is best known to myself.

Question. Do you refuse to answer my last question?

Answer. I refuse to give you any other answer.

Question. Have you any present business connections with the complainant in this suit?

Answer. I don't know as that has anything to do with this case.

Question. Do you refuse to answer my last question?

Answer. I did answer your last question.

Question. Do you decline to make any further answer?

Answer. No sir.

Question. Answer the last question then which I have already put.

Answer. I have; I am Wheeler's agent, to go to Pike's Peake to represent his interest in a quartz mill.

The witness being re-examined by Mr. Finch for the complainant, testifies and says:

Question. Do the memorandum book which you have referred to contain entries relating to your own private matters?

104 (Objected to Mr. Emmons—1st, as leading; 2d, as giving parol evidence of the contents of the book; 3d, to any question whatever, on the part of the complainant to his witness, while he is in contumacy for refusing to answer the cross-interrogatory of the defendant.)

Answer. They do.

Question. Mr. Reed, will you produce to the commissioners a

sworn copy of the memorandum in your book as to the conversation with Mr. Sage in Troy, New York, in November 1852?

(Objected to same as foregoing, with this addition, that the complainant has no right to produce or use any copy while they refuse to produce and subject to inspection the original; and, further, because the complainant has no right to attach to the deposition any document not produced upon the examination, so as to be the subject of cross-examination.)

Answer. Yes sir.

Question. Will you state what reasons you have for declining to answer more specifically the cross-interrogatories of the counsel for the defendant?

(Objected to—1st, because the complainants has no right, while the witness is in contumacy, and refused to answer the cross-interrogatory of the defendant, to resume the direct examination; and 2d, because his reasons are immaterial)

Answer. Because I didn't propose to let them know of the whereabouts of my own books, my private property.

D. C. REED.

105 And I do further certify that the preceeding deposition was reduced to writing by me, and signed by the said Duncan C. Reed, and that I am not of counsel or attorney for either of the parties to said suit, nor am I interested in the event thereof.

WALTER S. CARTER,
Commissioner U. S. Dist. Court for the Dist. of Wisconsin.

Deposition of H. Slocum.

District court of the United States for the district of Wisconsin.—In chancery.

CHARLES H. WHEELER
vs.
RUSSELL SAGE

Deposition of Hiram Slocum, taken on the part of complainant, pursuant to a stipulation providing for the taking thereof, on the first day of December instant, and adjourned by consent of counsel to this third day of December, A. D. 1860, before Winfield Smith, one of the commissioners and master of this court, at his office in the city of Milwaukee, in said district.

Present: M. H. Carpenter, for the complainant; James S. Brown, for the defendant.

Hiram Slocum, being duly sworn, deposes and says:

My name is Hiram Slocum; my age is fifty-eight; I reside in Orangetown, Rockland county, State of New York. I have known the defendant twenty-three years, and the complainant about
106 ten years. I entered into a partnership with these parties in September, 1851. The firm in this city was Wheeler & Co.,

and in Troy, R. Sage & Co. The members of both firms were the same, being Charles H. Wheeler, Russell Sage, and myself. That partnership continued three years. Their business was the purchase of produce in Wisconsin and forwarding the same to Troy. Mr. Wheeler had charge of the business here, and Mr. Sage in Troy. I purchased in the forepart of September, 1851, and interest in a mortgage, given by Alanson Sweet to John W Bates and Russell Sage. I purchased an interest of Russell Sage. One-half of the mortgage Mr. Wheeler purchased of Mr. Sage, and me one-third interest in the mortgage in the year 1853, some two years after our partnership commenced. After the purchased by Wheeler, that mortgage was treated as partnership assets by all the members of our firm. After I had purchased the interest, Mr. Sage had the management of the mortgage and of the property described in it, which was known as the wharehouse property in Milwaukee. I remember hearing and knowing of a suit being commenced to foreclose that mortgage. During the pendency of that foreclosure suit I had a conversation with Sage about an arrangement he had made or would make with Alexander Mitchell as to purchasing certain judgments against Alanson Sweet.

(The defendant objects to the evidence of the conversation as immaterial.)

Mr. Sage said Mr. Mitchell would procure for the firm a perfect title to the property if we would pay him ten thousand dol-
107 lars in cash. He said that Mr. Mitchell was going to purchase judgments that were against Sweet. I understood those judgments to be liens on the property, and in that way he would fix the *the* title. He asked me if I would consent to the arrangement that he had made or would make with Mitchell; he said that Mr. Wheeler was willing to do it. I said that I would consent, and that he should charge me on the books with my share of the amount.

I don't know whether Mr. Sage was in Wisconsin about the 23 of October and the 20th November, 1855, except from some papers which were handled about that time.

Question. Did Mr. Sage at any time present to the said firm any bill for his travelling or other expenses in attending the foreclosure sale under that mortgage?

(The defendant objects to all proof as to the bill without its production.)

Answer. He did. He charged it to the general account of the firm.

(The defendant objects to the testimony, or to the account, without the production of the account.)

On Mr. Sage's return from that sale he represented to me what had taken place. He said that the property had been sold and bid off by Mr. Mitchell. He said to me that he was ready to close the account with me, and settle with me, and accordingly gave me his note for the balance due me on account of the mortgage—some $7,000. (He did not say anything about his retaining any interest in the premises subsequent to the sale. I was a year and a half or two years after the sale before I learned that he had an interest in the premises.)

108 (Objected to by the defendant as hearsay.)

I spoke to Mr. Sage about it, and asked him whether he had retained any interest in the mortgaged premises after the foreclosure sale. On my return from Milwaukee, some two years after the sale, I called on Mr Sage at his office in Troy; I told him that I had learned that he had still an interest in the wharehouse property in Milwaukee; I stated that I had learned it of Alanson Sweet; he denied that he had any, and charged Mr. Sweet with falsehood in representing so.

(The foregoing testimony and each and every part thereof is taken subject to the objection of the defendant—first, that the same is irrelevant; second, because a trust in real estate cannot be raised by parol.)

Cross-examined by Mr. Brown.

I don't remember whether we committed our partnership agreement to writing; I think we did, but I am not sure.

(The defendant now objects to all portion of the direct testimony relating to the partnership because the same was in writing.)

Mr. Sage gave me an article showing my interest in the mortgage, about the time I purchased the interest in it.

I have no knowledge whether any writing was given to Mr. Wheeler, but I do remember, on reflection, that Mr. Sage brought to me an article for me to sign, giving Mr. Wheeler an interest in the mortgage. The bill for Mr. Sage's expenses in coming to Wisconsin to attend the sale was in writing, and was entered on his account in writing.

(The defendant here objects to all evidence of the purchase
109 by Wheeler, of the purchase by Sage, of the contents of the bill, and of the charge on the books, because it appears that the same were in writing, and because the writing is the best evidence.)

Our partnership business was chiefly the purchase and sale of produce. Mr. Sage resided in the State of New York, and managed the affairs of the firm there, as far as produce was concerned, and Mr. Wheeler resided in Milwaukee, and managed them here. Prior to and up to the time of this sale Mr. Wheeler used and occupied this wharehouse in the name of the firm.

Question. Did you ever advance any portion of $10,000 to Mr. Sage, for the purpose of being paid to Mr. Mitchell?

Answer. I requested Mr. Sage to charge me with my share, I then having credit on the books for an amount more than double the amount of my share; I did not, subsequently, advance anything for that purpose.

Question. Did you at that time pay Mr. Sage any money or other thing for that purpose?

Answer. I did not, in any other way than I have stated. I distinctly said that I wished him to charge me on the books of the partnership with my share of the amount; the amount that was standing to my credit, as I have stated, was also on the books of the partnership.

The conversation with Mr. Sage on that subject was in May, 1855, (I think,) and in my office, in the city of Troy; I can't say whether any person was present. I never saw any charge of that amount to me on the books, and don't know whether or not it was charged.
110 I think the note was given at his office, in the city of Troy,

(or else at mine, which was in the same building,) very soon after the sale; I think no one was present when he gave me the note; this note was given in settlement of my share of the mortgage, and it was paid.

I think Mr. Sage said then that he had not received the money on that sale. The note he gave me drew interest, or interest was put into it; it was made as a payment on that day. The partnership is not now existing; I went out of the concern, as a produce operator, in 1854; I was a partner, at the time of the sale, no further than as joint owner of the mortgage; I had withdrawn in 1854; I had only a claim under the mortgage at that time; I had an account for rent on the property under the mortgage.

I have instituted a suit against Mr. Sage in regard to this same property in Troy, New York; I have not taken Mr. Wheeler's testimony in that suit, but I suppose that I shall take it; Mr. Wheeler is a defendant in that suit with Mr. Sage.

Re-examined by Mr. Carpenter.

Question. When you directed Sage to charge you on the books of the firm your share of the $10,000, did he make any objection to that method of making the advance?

(The defendant objects to the question for immateriality, and because a trust in land cannot be raised by parol.)

111 Answer. No, sir; he did not. I then had a balance of more than twice that amount on the books of the firm which had been struck, having grown out of the produce business of the firm. (Taken subject to the last objections.) The note given by Sage to me was paid before I learned that Sage had any interest in the premises. (Taken subject to the same objections.)

HIRAM SLOCUM.

DISTRICT OF WISCONSIN, *ss:*

I, Winfield Smith, a commissioner and master, as stated in the caption of the foregoing deposition, do certify that, at the time and place named in the said caption, appeared the counsel and witness therein named, and the said witness was thereupon by one duly sworn to testify the truth, the whole truth, and nothing but the truth, in the said cause, and his examination so taken on oath was by me reduced to writing, read to him, and by him subscribed in presence of the said counsel and witness; and I further certify that the questions and objections were also reduced to writing by me when desired by either counsel.

Dated this fourth day of September, eighteen hundred and sixty-one.

WINFIELD SMITH,
Commissioner, &c.

112 *Evidence of records.—Warr. deed.*

Alex. Mitchell and wife to Milwaukee and Beloit R. R. Co.

This indenture, made the eighth day of November, in the year of our Lord one thousand eight hundred and fifty-six, between Alex.

Mitchell, of the city of Milwaukee, and Martha, his wife, parties of the first part, and the Milwaukee and Beloit Railroad Company, party of the second part, witnesseth: That the said parties of the first part, for and in consideration of the sum of twenty-five thousand dollars, to them in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, have given, granted, bargained, sold, remissed, released, aliened, conveyed, and confirmed, and by these presents, do give, grant, bargain, sell, remise, release, alien, convey, and confirm unto the said party of the second part, its successors and assigns forever, all of the following described tracts or parcels of land situate in the 5th ward of Milwaukee aforesaid, and being part of lot No. (6) six, in fractional section number thirty-three, (33,) in township No. seven, (7,) range twenty-two, (22;) that is to say, commencing in the west line of said lot six (6,) at a point parallel with the south line of Washington street; thence south, along the west line of said lot six (6,) to a point midway between the said south line of Washington street and the south line of said lot six, (6;) thence east to the centre of Milwaukee river; thence northly, along the centre of said river, to a point parallel with the said south line of Washington street; thence west to the place of beginning, reference being
113 had to Laphan's map of Milwaukee, of 1856, meaning thereby to convey the whole of the northerly part of said lot six, (6,) which lies north of a line to be drawn through the centre of said lot six, (6,) equidistance from the south line of Washington street extended and the south line of said lot six, (6;) to have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging, or in anywise thereunto appertaining, and all the estate, right, title, interest, and claim whatsoever of the said parties of the first part, either in law or equity, to the only proper use, benefit, and behoof of the said party of the second part, its successors, and assigns forever; and the said Alexander, of the first part, for himself, his heirs, executors, and administrators, does covenant and agree to and with the said party of the second part, its successors, and assigns, that he will warrant and defend the aforesaid premises to be free and clear of all claim or claims of all and every person claiming or to claim by, through, or under the said parties of the first part, and none other. In witness whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

ALEX. MITCHELL. [SEAL.]
MARTHA MITCHELL. [SEAL.]

Signed, sealed, and delivered in presence of—
J. A. PIRIE.
JOHN JOHNSTON.

STATE OF WISCONSIN,
County of Milwaukee:

Be it remembered that on the twenty-fourth day of December, A. D. 1856, personally came before me, the above-named Alexander Mitchell, and Martha, his wife, to me known to be the persons

114 who executed the said deed, and acknowledged the same to be their free act and deed, for the uses and purposes therein mentioned.

J. A. PIRIE,
Notary Public, Milwaukee Co.

Recorded Dec. 25, 1856, at 11 o'clock a. m., in vol. 54 of deeds, pages 570, 571.

Deed.

Alexander Mitchell and wife to Mrs. Charlotte J. Baker.

This indenture, made this eighteenth day of February, in the year of our Lord one thousand eight hundred and fifty-seven, between Alexander Mitchell and Martha, his wife, of the city and county of Milwaukee, and State of Wisconsin, parties of the first part, and Mrs. Charlotte J. Baker, of the same place, party of the second part, witnesseth: That the said parties of the first part, for and in consideration of the sum of fifty-five hundred dollars, to them in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, have given, granted, bargained, sold, remised, released, aliened, conveyed, and confirmed, and by these presents do give, grant, bargain, sell, remise, release, alien, convey, and confirm unto the said party of the second part, his heirs, and assigns forever, lots eleven (11) and twelve, (12,) in block No. thirty-five, (35,) in the fifth ward of the city of Milwaukee, in the State of Wisconsin, in that part of the fifth ward known as Walker's Point; to have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging or in anywise thereunto appertaining, and all the estate, right, title, interest, and claim whatsoever of the said parties of the first part, either in law or equity, to the only
115 proper use, benefit, and behoof of the said party of the second part, her heirs, and assigns forever; and the said parties of the first part, for themselves, their heirs, executors, and administrators, do covenant and agree to and with the said party of the second part, her heirs, and assigns, that they will warrant and defend the aforesaid premises to be free and clear of all claim or claims of all and every person claiming or to claim by, through, or under the said parties of the first part, and none other. In witness whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

ALEX. MITCHELL. [SEAL.]
MARTHA MITCHELL. [SEAL.]

Signed, sealed, and delivered in presence of—
D. FERGUSON.
J. A. PIRIE.

STATE OF WISCONSIN, *County of Milwaukee:*

Be it remembered that on the twenty-eighth day of February, A. D. 1857, personally came before me the above-named Alexander Mitchell

and Martha, his wife, to me known to be the persons who executed the said deed, and acknowledged the same to be their free act and deed for the uses and purposes therein mentioned.

J. A. PIRIE,
Notary Public, Milwaukee Co.

Recorded March 5, 1857, at 3¼ o'clock, p. m., in vol. 56 of deeds, on page 237.

Deed.

Alexander Mitchell and wife to Robert H. Strong et al.

This indenture, made the twenty-eighth day of February, in the year of our Lord one thousand eight hundred and fifty-seven, between Alexander Mitchell, of the city of Milwaukee, and Martha, his wife, parties of the first part, and Robert H. Strong and Levi H. Keelogg, of the same place, parties of the second part, witnesseth: That
116 the said parties of the first part, for and in consideration of the sum of fifty thousand dollars to them in hand paid by the said parties of the second part, the receipt whereof is hereby confessed and acknowledged, have given, granted, bargained, sold, remised, released, aliened, conveyed, and confirmed, and by these present do give, grant, bargain, sell, remise, release, alien, convey, and confirm unto the said parties of the second part, their heirs and assigns forever, all those certain parcels or lots of land situate, lying, and being in the fifth ward of said city of Milwaukee, and known and described as lots numbered four, (4,) five, (5,) six, (6,) and seven, (7,) in block number fifty-four, (54;) said premises bordering upon the Milwaukee river, and whereon is erected the brick wharehouse commonly known as "Sweet's wharehouse," subject to existing lease to Montgomery and Cutler, to expire on first day of September next; to have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging, or in anywise thereunto appertaining, and all the estate, right, title, interest, and claim whatsoever of the said parties of the *of the* first part, either in law or equity, to the only proper use, benefit, and behoof of the said parties of the second part, their heirs and assigns forever; and the said parties of the first part, for themselves, their heirs, executors, and administrators, do covenant and agree, to and with the said parties of the second part, their heirs and assigns, that they will warrant and defend the aforesaid premises to be free and clear of all claim or claims of all and every person claiming or to claim by, through, or under the said parties of the first part, and none other.

117 In witness whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

ALEX. MITCHELL. [SEAL.]
MARTHA MITCHELL. [SEAL.]

Signed, sealed, and delivered in presence of—
D. FERGUSON,
J. A. PIRIE.

STATE OF WISCONSIN,
County of Milwaukee:

Be it remembered that on the twenty-eighth day of February, A. D. 1857, personally came before me the above-named Alexander Mitchell and Martha, his wife, to me known to be the persons who executed the said deed, and acknowledged the same to be their free act and deed for the use and purposes therein mentioned.

J. A. PIRIE,
Notary Public, Milwaukee Co.

Recorded February 28th, '57, at 5 o'clock p. m., in vol. 56 of deeds, page 283.

Deed.

Alexander Mitchell and wife to John B. Merrill and Philander W. Burrows.

This indenture, made the eighteenth day of February, in the year of our Lord one thousand eight hundred and fifty-seven, between Alexander Mitchell and Martha, his wife, of the city and county of Milwaukee, and State of Wisconsin, parties of the first part, and John B. Merrill and Philander W. Burrows, of the same place, parties of the second part, witnesseth: That the said parties of the first part, for in consideration of the sum of forty-five hundred dollars, to them in hand paid by the said parties of the second part, the receipt whereof is hereby confessed and acknowledged, have given, granted, bargained, sold, remised, released, aliened, conveyed, and confirmed, and
118 by these presents do give, grant, bargain, sell, remise, release, alien, convey, and confirm unto the said parties of the second part, their heirs and assigns forever, lots thirteen (13) and fourteen (14,) in block thirty-five (35,) in the fifth ward of the city of Milwaukee, and State of Wisconsin, in that portion of the fifth ward known as Walker's Point; to have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging, or in anywise thereunto appertaining, and all the estate, right, title, interest, and claim whatsoever of the said parties of the first part, either in law or equity, to the only proper use, benefit, and behoof of the said parties of the second part, their heirs and assigns forever; and the said parties of the first part, for themselves, their heirs, executors, and administrators, do covenant and agree to and with the said parties of the second part, their heirs, and assigns, that they will warrant and defend the aforesaid premises to be free and clear of all claim or claims of all and every person claiming or to claim by, through, or under the said parties of the first part, and none other. In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

ALEXANDER MITCHELL. [SEAL.]
MARTHA MITCHELL. [SEAL.]

Signed, sealed, and delivered in presence of—
D. FERGUSON.
J. A. PIRIE.

STATE OF WISCONSIN,
County of Milwaukee:

119 Be it remembered that on the second day of March, A. D. 1857, personally came before me the above-named Alexander Mitchell and Martha, his wife, to me known to be the persons who executed the said deed, and acknowledged the same to be their free act and deed for the uses and purposes therein mentioned.

J. A. PIRIE,
Notary Public, Milwaukee Co

Recorded March 4, 1857, at 2¾ o'clock a. m., in vol. 57 of deeds, pages 190 and 191.

Alanson Sweet and wife to John W. Bates et al.

This indenture, made the twelfth day of September, in the year of our Lord, one thousand eight hundred and forty-nine, between Alanson Sweet and Emily, his wife, of the city and county of Milwaukee, State of Wisconsin, parties of the first part, and John W. Bates and Russell Sage, of the city of Troy, in the county of Rensuler, State of New York, parties of the second part, witnesseth: That the said parties of the first part, for and in consideration of the sum of sixteen thousand dollars, to them in hand paid, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, and by these presents do grant, bargain, and sell, unto the said parties of the second part, and to their heirs and assigns forever, all that certain piece or parcel of land situate, lying, and being in the county of Milwaukee, State of Wisconsin, and known and described as follows, to wit: commencing at a point twenty-three (23) rods south from
120 the northeast corner of the northwest quarter of section five (5,) in township six (6,) of range twenty-two (22;) running thence west, on a line parallel with the north and south lines of said quarter section, forty (40) rods to point; thence south, on a line parallel with the east and west lines of said quarter section, to the south line of said quarter section; thence east to the east line of said quarter section; thence north to the place of beginning; and all the following lots situate, lying, and being in the fifth ward of the city of Milwaukee, in said State of Wisconsin, viz: lots four (4,) five (5,) six (6,) and seven (7,) in block fifty-four (54;) lots eleven (11,) twelve (12,) thirteen (13,) and fourteen (14,) in block thirty-five (35;) lots three (3,) five (5,) and eight (8,) in block fifty-five (55,) and also lot six (6,) situate, lying, and being in fractional section thirty-three (33,) in township seven (7,) north of range twenty-two (22) east; to have and to hold the above bargained premises, with appurtenances, unto the said parties of the second part, their heirs and assigns forever: provided always, and these presents are upon this express condition, that if the said Alanson Sweet, one of the parties of the first part, his heirs, executors, administrators, or assigns, shall well and truly pay, or cause to be paid, to the said parties of the second part, their heirs, executors, administrators, or assigns, the sum of sixteen thousand dollars, with interest, according to the condition of a certain

bond bearing even date herewith *herewith*, executed by Alanson Sweet,
one of the said parties of the first part, to the said parties
121 of the second part as collateral security, then these presents
and the said bond shall cease and be null and void. And the said Alanson Sweet doth further covenant and agree that he will pay all taxes and assessments of every nature that may be assessed on said premises previous to the day appointed in pursuance of any law of the State for the sale of lands for taxes, and also will pay the sum of two hundred dollars as solicitor's fees in case of foreclosure of this mortgage by reason of the non-performance of any of the conditions hereof by said parties of the first part; and in case of the non-payment of said sum, or any part thereof, at the time or times above limited for the payment thereof, or in case of the non-payment of any taxes that may be assessed on said premises in manner aforesaid, then and in either case it shall or may be lawful for the said parties of the second part, their heirs, executors, administrators or assigns, and the said parties of the first part do hereby covenant and agree, and by these presents empower and authorize the said parties of the second part, their heirs, executors, administrators or assigns, to grant, bargain, sell, release, and convey the said premises, with the appurtenances thereunto belonging, at public auction or vender, and on such sale to make and execute to the purchaser or purchasers, his, her, or their heirs and assigns forever, good, ample and sufficient deeds of conveyance in the law, pursuant to the statute in such case made and provided, and out of the moneys arising from such sale, to return
122 the principal and interest which shall then be due on the said
bond, together with the costs and charges, and the said sum of two hundred dollars as solicitor's fees as aforesaid, rendering the surplus moneys, if any there be, to the said parties of the first part, their heirs, executors, administrators or assigns, after deducting the costs of such vendue, as aforesaid.

In witness whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

ALANSON SWEET. [SEAL.]
EMILY SWEET. [SEAL.]

Signed, sealed, and delivered in presence of—
A. FINCH, Jr.
JOS. ODY.

THE STATE OF WISCONSIN,
County of Milwaukee, ss:

Be it remembered that on the twelfth day of September, A. D. 1849, personally came before me the above-named Alanson Sweet, and Emily, his wife, to me known to the persons who executed the foregoing mortgage, and acknowledged the execution thereof freely and voluntarily for the uses and purposes therein mentioned.

JAS. ODY,
Notary Public, Milwaukee Co., Wis.

Recorded October 17, A. D. 1849, at 9¾ o'clock a. m., in vol. L, of mortgages, on pages 29 and 30.

the commissioners of this court. At the time of that examination, I understood from Mr. Emmons that I would be further examined on the part of the defendant.

Ques. Did you ever read, or have read to you, that portion of the answer of Mr. Sage in this case which refers to the agreement between yourself and himself, in relation to his having an interest in the mortgaged premises; and if so, when, as near as you can state, and whether it was before the filing of the answer?

Answer. On my way from my house to my office one morning, when passing the office of Emmons and Van Dyke, I was called in there, and did have read to me, by Mr. Emmons, I think, the whole of the answer of Mr. Sage, and certainly before it was filed, and I think, before it was required. I do not recollect—I cannot fix the time.

2d ques. What was your then impression as to the time when the agreement referred to between you and Mr. Sage was made—whether before or after the sale of the mortgaged premises?

(Objected to, as immaterial, by plaintiff.)

2d answer. According to my recollection, the answer of Mr. Sage set forth that there was no agreement between him and me prior to the sale; and I think I gave a general assent to the facts set forth in the answer, so far as they were within my own knowledge. It is
150 proper for me to state that, upon reflection, I became satisfied that I was mistaken, and that there was a verbal agreement or understanding between me and Mr. Sage antecedent to the sale, as I have heretofore already testified to in this case.

3d question. Can you state how much there is due to Mr. Sage, under the agreement between you and him; or, if you cannot here state, can you furnish a statement in writing, to be annexed to your deposition, showing the amount due?

(Objected to by plaintiff, as irrelevant and immaterial.)

3d answer. I believe the amount now due under my agreement with Mr. Sage, including interest, is about thirteen thousand dollars; but I can furnish a precise statement of it if it is desired.

4th question. Would you, but for the agreement you made with Mr. Sage, have paid in cash the amount agreed upon as due on the Sage mortgage?

(Objected to by pl'ff, as immaterial and incompetent.)

4th answer. I should have bid at the sale the amount agreed upon as due upon in the Sage mortgage, and more too, if necessary, but for the agreement with Mr. Sage.

5th question. Was the agreement, fixing the amount as due upon the mortgage at ($22,600 00) twenty-two thousand six hundred, any part of, or had it any connection with the agreement by which Mr. Sage was to retain an interest in the property?

5th answer. The agreement for fixing the amount, or laying
151 down a basis for fixing the amount due on the mortgage, formed no part of, and had no connection whatever with the subsequent agreement between Mr. Sage and myself, in reference to bidding in the property at the sheriff's sale. The agreement fixing the amount due was, according to my recollection, made some months prior to the agreement between myself and Sage for bidding in the

property; and at the time of the first arrangement, fixing the amount due on the mortgage, there was no conversation or agreement beyond that. At the time the basis for fixing the amount due upon the mortgage was fixed and agreed upon, I had no other idea but of bidding in, and paying cash for the property.

6th question. Between whom, and by whom, personally, was the agreement made for the basis of that decree, and also the subsequent written agreement, by which Mr. Sage was to retain an interest in the property, made?

6th answer. The proposition for a basis of the settlement of the mortgage was made by Mr. Sage to myself—whether verbally or in writing I do not now recollect. I answered, in writing, that so far as I was concerned, I would assent to it, although I regarded that he was getting the best end of the bargain. The subsequent agreement was conducted between me and Mr. Sage in person, and, I think, was made when Mr. Sage came on here to attend the sale.

7th question. Was Alanson Sweet present at any of those negotiations, or, to your knowledge, did he know of them until after they were consumated; or did he have anything to do with them, directly or indirectly, to your knowledge?

(Objected to as immaterial and incompetent, by pl'ff.)

152 7th answer. I have no recollection of Mr. Sweet being present at any of my negotiations with Mr. Sage, nor am I aware that he knew anything about them at the time they were made, nor do know that he had anything to do with them, in any way, directly or indirectly.

8th question. Do you know of Alanson Sweet ever having an interview, at your bank, with Mr. Sage, in regard to the arrangement which was finally consumated between you and Mr. Sage, on the day before, or shortly before, the decree was entered in the Sage foreclosure?

8th answer. I have no recollection of any such interview, and am not aware that any such took place.

9th question. Are there any circumstances within your knowledge which teach you to believe that no interview was had between Sweet and Sage on the subject, or that no negotiations on the subject transpired between them? and if so, state them.

9th answer. I recollect Mr. Sweet saying that he wouldn't have any negotiations with Mr. Sage. I don't recollect any other circumstances just now. (This answer objected to by plaintiff as not responsive.)

10th question. Did Mr. Sweet ever meet Mr. Sage in your bank, at the time of the decree, or just before?

10 answer. I have no recollection of it. It would be impossible for me to state positively, so many come into the bank.

11th question. If Alanson Sweet had had a negotiation with Mr. Sage—an agreement establishing the basis of a decree in the case, and the further agreement that Sage was to retain an interest in the property after the sale—don't you think you would have known it, or heard of it, and did you ever know or hear of such a thing?

153 11th answer. I never heard from either party, or from any

source, of any negotiations having taken place between them. If I had heard such, I have no question but that I should have recollected it. If any such agreement had taken place, I think I should have been likely to have heard of it. I have heard, since the commencement of certain suits, that Mr. Sweet claims that he had some negotiations with Mr. Sage; but didn't hear it till I heard Mr. Sweet had testified to that effect

12th question. Do you know whether Mr. Wheeler was informed of the fact, or the substance, of the agreement between you and Mr. Sage, prior to the sale?

12th answer. I have no positive personal recollection, altho' I do not well see how it could have been otherwise. There was certainly no secrecy in the matter, and I was as free to talk with Mr. Wheeler as Mr. Sage. This answer refers exclusively to the agreement as to the basis for fixing the amount due under the mortgage.

13th question. Prior to the sale, did Mr. Wheeler apply to you to make any arrangements for, or negotiate for, the purchase of the wharehouse property, either personally or through other persons, or both, and what took place?

13th answer. I think Mr. Wheeler did apply to me, prior to the sale, on behalf of himself and Lindsay Ward, in regard to the purchase of the wharehouse property, and two lots opposite; and I think that Lindsay Ward also spoke to me on the subject. I declined entering into any negotiations until I had the title to the property. Their application was to purchase from me, supposing that I would become the owner of the property.

14th question. Were you present at the sale of the mort-
154 gaged premises under the decree; and who else was present?

14th answer. I was present; Mr. Sage was present; Mr. Wheeler, I think; Mr. Emmons, Mr. Lindsay Ward. There were others, but I don't recollect them. Mr. Sweet was there, too.

15th question. Was there ever any agreement, at any time, between you and Mr. Sage, or between you and Sage and complainant, by which you were to give them the title to, or aid them in perfecting title to, the wharehouse property, for the sum of ten thousand dollars?

15th answer. There was, at one time, an overture made to me by Mr. Wheeler on that subject. Personally I was then willing to do anything in my power to have it carried out, but it became impracticable to do it, and the whole thing fell through.

And the said witness being then cross-examined by the plaintiff, did testify and depose as follows:

1st cross-interrogatory. What did Mr. Wheeler, or Wheeler and Ward, propose to pay you for that property?

Answer. I think their offer was, for the wharehouse and two lots opposite, with a barn or other buildings on one of them, thirty-five thousand dollars—part down and part on time. I have the impression that they would have given somewhat more than that, but how much I do not now recollect. That was their first offer, I know.

2d cross-interrogatory. May you not be mistaken, and may not this proposition have been first made after the sale?

Answer. Propositions were made after the sale, but I am quite confident that I was applied to prior to the sale.

3d cross-interrogatory. Can you now distinctly call to mind
155 any interview between you and Wheeler upon this subject prior to the sale? If so, state, as distinctly as you now remember them, the time, place of, and circumstance of, attending such interview.

Answer. No. I cannot distinctly call to mind any interview with Mr. Wheeler, upon the subject, prior to the sale, nor could I any subsequent to the sale. (The part of the answer referring to interviews subsequent to the sale objected to by pl'ffs, as not responsive.)

4th cross-interrogatory. Do you now recollect any interview with Lindsay Ward, upon the subject, that you can positively swear took place before the sale?

Answer. I have no positive recollection. I think I walked part of the way up to the court-house, to attend the sale, with Lindsay Ward. There was some conversation on the subject. This is the only time I have distinct recollection of.

5th cross-interrogatory. Can you positively swear, from present recollection of the fact, that you and Wheeler had any conversation on the subject prior to the sale?

Answer. I cannot swear from present recollection. I swear to my confident belief, but do not recollect particular interviews.

6th cross-interrogatory. Do you recollect, certainly, that in the conversation between you and Ward, while going to the court-house, on the day of the sale, any proposition was made by him to buy this property of you?

Answer. No; I think there was some general talk on the subject, but I do not recollect a specific proposition, aside from my impression of what had been made before.

7th cross-interrogatory. Can you now distinctly recollect any part of that conversation between you and Ward? If so, relate it, giving what was said by him, and your replies, so far as you can distinctly remember that it took place.

Answer. I could not undertake to relate specifically any portion of the conversation.

8th cross-interrogatory. Was the contract, which was made for a basis for calculating the am't due under the mortgage, made between you and Sage alone?

Answer. I do not recollect whether it was first talked over verbally between Sage and myself, tho' I think it was. Whether the letters were required by Mr. Sage individually or for the firm, I do not know. It was substantially agreed upon between Mr. Sage and myself.

9th cross-interrogatory. Was the contract between you and Sage, by which Sage was to retain an interest in the mortgaged property, negotiated and concluded by you and Sage alone?

Answer. It was negotiated and concluded between Mr. Sage and myself only.

10th cross-interrogatory. Who first proposed that arrangement—you or Mr. Sage?

Answer. I do not recollect positively, but think likely the negotiations on that subject were opened by myself.

11th cross-int'y. How opened—verbally or by letter?

Answer. Opened verbally.

13th cross-int. When and where?

Answer. According to my recollection, opened here, when Mr. Sage came to attend the sale.

14th cross-int. How long before the sale?

Answer. It must have been immediately prior to the sale—a day or two, I should think.

15th cross-interrogatory. Can you swear positively that there were no negotiations or conversations in regard to his retaining such interest, had between you and Sage prior to the decree?

157 Answer. Yes; I can swear positively there was nothing of the kind.

16th cross-interg't. In what office or building were these negotiations opened?

Answer. I have no doubt they were opened in my office, and I presume in business hours.

17th cross-interg't. How long were these negotiations pending before you and Mr. Sage came to an understanding?

Answer. I have no recollection of any negotiations till Mr. Sage came here to attend the sale. The negotiations ran through a day or two; that is my recollection of it.

18th cross-interg't. Did you and Mr. Sage have several interviews on this subject, or were the negotiations opened and concluded in the same interview and conversation?

Answer. I saw Mr. Sage frequently when he was here, and I think it might have been the subject of conversation at several interviews, although I have no positive recollection now.

19th cross-interrg't. For what amount did you bid off the warehouse and two lots?

Answer. The whole property was bid for nineteen thousand dollars, about. How much was on the wharehouse I don't recollect. I recollect of no bid by any other person but myself. The most of that sum was on the wharehouse.

20th cross-interg't. Do you remember Mr. Sage being here about the time the decree was entered in that foreclosure suit?

Ans. I don't recollect whether he was or not; indeed, I don't recollect when the decree was entered. He may have been, but I don't recollect.

21st cross-interg't. Did you see Mr. Sage in New York about 21st May, 1855?

158 Ans. Yes; I think I did.

Adjourned, by consent of parties, till to-morrow morning, (Tuesday, July 2d, 1861,) for Mr. Mitchell to have read to him and subscribe this his deposition.

On this 3d day of August, 1861, before the said commissioners, at his office in the city of Milwaukee, came the complainant, by M. H. Carpenter, esq., his counsel, and the defendant, by J. S. Brown, esq.,

his counsel; and the said witness, Alexander, after having read his foregoing depositions, said he wished to make the following corrections, viz: The witness said, since my examinations on the first of July, 1861, things have come to my recollection that satisfy me that I have partially confounded two visits of Mr. Sage to Milwaukee, and have thus been laboring under a mistake as to the time when the negotiations were begun between him and myself, in reference to the arrangement for bidding in the property I am now satisfied that the matter must have been talked over and understood when Mr. Sage came here in November, at the request of Mr. Emmons, in regard to the decree. The arrangement for the decree, and that about bidding in the property, however, were not dependant arrangements, and had no connection whatever with each other, and I am still confident the latter was not made till after the entry of the decree.

ALEX. MITCHELL.

Sworn and subscribed before me this 3d day of August, 1861.

FR. BLOODGOOD,
U. S. Court Commissioner, District of Wisconsin.

159 UNITED STATES OF AMERICA,
District of Wisconsin, ss:

I, Francis Bloodgood, one of the commissioners of the district court of the United States of America for the district of Wisconsin, do certify that the foregoing is the deposition of Alexander Mitchell, in the foregoing entitled cause, taken before me, as stated in the caption thereof, and of all the proceedings before me at the taking of said deposition; that said deposition was reduced to writing by the commissioners, as given by the said witness, and when finished was read over by said witness, and on the 3d day of August, 1861, subscribed and resworn to by said witness before the commissioners.

In witness whereof, I have hereunto set my hand and seal this 3d day of August, 1861.

FR. BLOODGOOD, [SEAL]
U. S. Court Com's, &c., District of Wisconsin.

Fees of com'r.

Oath	10
45 fols	9 00
	$9 10

160 "*Exhibits.*"

Article of agreement, made the first day of September, A. D. 1851, between Hiram Slocum and Russell Sage, of the city of Troy, county of Rensselaer and State of New York, of the one part, and Charles H. Wheeler, of the town of Stephentown, county and State aforesaid, of the other part.

The said parties above named have agreed to become copartners in

the business of storeing, forwarding, and commission business, at and in the wharehouse lately occupied by Alanson Sweet, in Milwaukee, State of Wisconsin, and the purchase of and selling of produce, salt, coal, and such other articles as they may deem for their interest to operate in, from the period of one year from the date hereof, upon the following terms, conditions, &c: The said Slocum and Sage are to see to the business of the concern and firm of Wheeler & Co. at Troy, N. York, and the said Chas. H. Wheeler is to repair to said Milwaukee aforesaid and take charge of the business at that place, and to devote his entire time in the discharge of the business of the partnership hereby created; for which service he is to be paid by the firm the sum of eight hundred dollars for one year's services, and to share equally in the profits or loss of the business done with the said Slocum and Sage. And it is agreed by and between said parties that their share be had and kept at all times during the continuance of their copartnership, perfect, just, and true books of account, wherein shall be entered and set down all money paid out or received in or about the said business, as also all goods, wares, commodities, and merchandise,
by them or either of them bought or sold, by reason or on ac-
161 count of said business, and the management thereof, in any
wise belonging; which said books shall be used in common between the said copartners, so that either of them may have access thereto without any interruption or hindrance of the other. And at the end or other sooner determination of their copartnership, the copartners, each to the other, shall and make a true, just, and final account of all things relating to their said business, and in all things truly adjust the same; and all and every the stock and stocks, as well as the gains and increase thereof, which appear to be remaining, either in money, goods, wares, fixtures, debts, or otherwise, shall be disposed of an divided between them. The name of the firm shall be Wheeler & Co. The price to be fixed for the rent of the wharehouse and lots adjoining is to be the sum of two thousand dollars and the insurance on the buildings. The rent to be paid semi-annually.

In witness whereof, the parties have hereunto set their hands and seals the day and year first above written.

HIRAM SLOCUM. [SEAL.]
RUSSELL SAGE. [SEAL.]
CHAS. H. WHEELER. [SEAL.]

In presence of—
GORHAM DENISON.

Inasmuch as the partnership formed between the subscribed by the within agreement will expire on the first day of September next, it is hereby agreed that the same be continued for the term of one year from said first day of September next, with this alteration, that is to
say: the said Charles H. Wheeler is to be paid the sum of one
162 thousand dollars for one year's services, (instead of eight hundred dollars,) and the said Russell Sage is to be paid the sum of two thousand dollars for his services for one year, and all expences actually incurred for the benefit or use of said firm of said Wheeler & Co. The aforesaid compensation to said Wheeler and Sage is to

be paid by said firm of Wheeler & Co. In all other respects the within partnership contract is to be the same.

HIRAM SLOCUM.
RUSSELL SAGE.
CHAS. H. WHEELER.

Dated Troy, August 23rd, 1852.

In presence of—
JOHN W. BATES.

The within and above contract or agreement, amended, is hereby continued for the period of one year from the first day of September next.

HIRAM SLOCUM.
RUSSELL SWEET.
CHAS. H. WHEELER.

Dated Troy, August 23d, 1853.

In presence of—
A. CARY.

Memorandum of agreement made between Russell Sage and Hiram Slocum, of the city of Troy, in the State of New York, and Charles H. Wheeler, of the city of Milwaukee, in the State of Wisconsin, as follows: Said Sage and Slocum agree to account to said Charles H. Wheeler, or convey to him one undivided third of our interest in the property conveyed to Alanson Sweet, to said Sage and Slocum, on the 12th day of September, 1851, by quitclaim deed, and one undivided third interest in a certain mortgage executed by said Alanson Sweet to John W. Bates and Russell Sage, and assigned by
163 said Bates to Sage, for the sum of six thousand dollars, and one-third of the taxes and repairs and improvements paid by said Sage and Slocum, from the first day of September, 1852, to the date of conveyance to said Wheeler, or the accounting to him, which it is expected will be done as soon as the mortgage alluded to above shall have been foreclosed by Finch and Lynde, and the property sold in said foreclosure, on the property named and described in said mortgage. Said Wheeler hereby agrees to the agreement made and entered into to-day by said Russell Sage with Bishop & Co., for the purchase of one undivided half of the premises mortgaged in said mortgage alluded to aforesaid, and the sale and disposal of said property, and the purchasing of other property as named in said agreement between said Sage and said Bishop & Co., as aforesaid.

SAGE AND SLOCUM,
By RUSSELL SAGE.
C. H. WHEELER.

Dated Milwaukee, September 26th, 1853.

MARCH 3D, 1856.

Cancelled and void.

CHAS. H. WHEELER.

1867

164 WISCONSIN MARINE AND FIRE INSURANCE CO. BANK,
Milwaukee, 6th Oct., 1855.

DEAR SIR: I have received your favor of the . I have considered the proposition to allow you to make a statement of amount due on mortgage by Sweet, including all outlays for assessments, taxes, &c., and interest in the same, at 12 per cent. per annum, deducting therefrom an annual rent for use of the wharehouse of two thousand dollars per annum. This sum to be paid on the day of sale of the property. A decree to be taken in your name for the full amount due on the mortgage, which is to be made up at once, and a decree taken so that a sale can be had in December next, if possible. I am willing, so far as I am concerned, to consent to a settlement of the matter on the foregoing terms, which I consider very liberal for you, unless I prevented from doing so by other parties in interest. You had better write Finch & Lynde to make up the amount claimed to be due, and I will see Emmons and advise him to accept the same, believing it a fair settlement.

Yours, truly,

ALEX. MITCHELL.

Hon. R. SAGE, *Troy, N. Y.*

MILWAUKEE, 17 *Oct*, 1855.

MY DEAR SIR: I have your favor of the 10th current, and note contents. I have been laid up again for 4 or 5 days past, but am able to be out to-day. I had an interview with Emmons at my house a few days ago, and I got him to consent to a decree (on behalf of our parties he represented, including Sweet) at once in your favor, on
165 the basis proposed. He agreed to write you, which I presume he has done. He was to leave for Detroit next day, to be absent for a week. Finch is disposed to be a little impracticable, and will not aid a particle in obtaining the judgments owned by the parties for whom he acts as attorney. I think he may be a little jealous about not trusting everything wholly to him. I don't think your writing him would do any good. You will be able when you see him, and not before, to make him do everything you want of him. I had no doubt Emmons has probably written you to come out again. I am not sure that this is necessary at present. Of course, it would be well to have you here, but I am aware you may not wish to come unless an imperative need exists. Emmons is now prepaired to agree (at least, I so understood him) to everything we wish; and if Finch is prepaired to do the same thing, I see no difficulty in the way of obtaining a decree at this time of the court. Sweet is not yet heard from.

In haste, yours, truly,

ALEX. MITCHELL.

Hon. R. SAGE.

BUFFALO, *Sept.* 17*th*, 1853.

Hon. R. SAGE:

DEAR SIR: It appears as though it would not be necessary for me to go further west at present on my own business, and I trust it will not on yours and mine, as you are conversant with everything appertaining to our business, and are fully competent to arrange them as well as though I was there. Should anything arise by which you desire my opinion, I will give it by telegraph or letter. If they
166 redeem the property you will get all that we are entitled to, including interest, taxes, repairs, &c., should you be able to make an arrangement with Mr. Blossom to let us hold it for the present, and then sell it to the R. Rood Co. when they want it to use. I should hope we could get $50,000 for it, &c.

Yours, truly,

HIRAM SLOCUM.

MILWAUKEE, *April the* 28*th*, 1854.

Hon. R. SAGE:

DEAR SIR: I arrived here last evening; found Mr. Wheeler in good health and in very good spirits. He has shown me a letter from you, in which you request him to have your lawyer to go on to New York and Boston, and by up judgments against Mr. Sweet. You say you, have learned from a reliable source that Mr. Sweet is going to oppose your getting title to the property we have here. I wish you was here, that we might consult together in regard to the best plan to pursue. We are of the opinion if you were here, or if you knew the excitement there is here about real estate, you would advise otherwise. We fear the consequence of attempting to get title in the way you proposed. Some are estimating that property to be worth 75,000, and some 90,000 dollars. Now, suppose you should buy up 20,000 or 25,000 dollars' worth of judgments, and there should be other judgment creditors to the amount of 20,000 or 25,000, come forward and bid on the property; we might be compelled to pay 20,000 or 30,000 dollars for that you have agreed to sell for $16,000. I must say I am afraid to risk the course you suggest. I am inclined to the opinion that we had better agree with Mr. Sweet first, and then, if
167 necessary, bey some judgments. I wish you would write me at Troy on the receipt of this.

Yours, truly,

HIRAM SLOCUM.

TROY, *May the* 15*th*, 1854.

Hon. R. SAGE:

DEAR SIR: I arrived in Troy on Saturday; found your favor of the 21st and 3d, and note contents. In relation to our Milwaukee matter, I fear we are bound by the agreement gave Bishop & Co., to let them have one-half of that property, or all the property described in that agreement, for the sum of $16,000. If I am right, you will see that we may place ourselves in a situation, that we may be compelled to

pay all the judgments that there are against Mr. Sweet, to give them title to it. Suppose there are $50,000 against Mr. Sweet, and we should buy one-half of them at 25 or 30, or 40c. on the dollar. Then suppose Mr. Blossom should let Sweet know what our situation is, and they should think it a good time to wipe out all of Sweet's debts, and at the same time make $10,000 or 15,000 out of us by getting some one to buy the balance of judgments against Sweet, at 20 or 30c. and then compell us to pay enough for the property to cover all judgments, or even more. If Mr. Blossom could do this, would he not? Would he loose any character by such a transaction? or would he not be called a shrewd fellow to outwit you? My suspicions may not be well founded; but is there not some good reasons to fear that there may be some such trap for us? I must confess I have my fears, in regard to the result. Are you not bound to give them a title
168 as soon as you can foreclose? and my opinion is that you had better see Mr. Blossum, and have everything in black and white, before you buy any judgments against Sweet, and then I am afraid they will outwit us I may be unnecessarily alarmed about that; but I am quite sure the best way is not to place ourselves in the power of Mr. Blossom; at least, not any more than we now are. Everything bought at Milwaukee looks as though it would pay well. Wheat, flour, rye, barley, oats, corn, and pork and beef, I think will pay. Please let me hear from you on the receipt of this, and oblige yours,

HIRAM SLOCUM.

I see you may reply to me in this way: If we are bound by these agreement, to give them good title to the property described in the agreement, why not buy all the judgments we can find against Sweet? I answer, if we can buy them all at a low price, that may be best; but if we only bought a part, and the trap was laid for us, we should be compelled to pay full prices for the rest, and possible more. I think, if we are bound to give them the property specified in the contract, that our better way will be to take a pacific course with Mr. Sweet and Blossom, and let them have the property as cheap as possible. That may satisfy them as well, and be much the nicest and cheapest way for us to get along with it. Are my suggestions and all my fears are based upon the supposition that you are bound to give them the ½ of the property, and based, also, upon the supposition that Mr. Blossom would make as much money out of you as he could, my opinion is, you should give this your immediate attention.

Yours, again, truly,

HIRAM SLOCUM.

169 MILWAUKEE, *Nov.* 12, 1855.

Hon. R. SAGE:

DEAR SIR: Your favors, 3d, 6th, 7th and 8th, are at hand and carefully noted. Your dispatch came to hand Saturday, stating you would be here 15th, and to notify Emmons what we have done. He says he will arrange it, so it will make no difference.

Yours, very truly,

WHEELER & CO.

TROY, *June 7th*, 1855.

Mess. FINCH & LYNDE:

GENTLEMEN: Yours of the 1st inst., with copy cross-bill, is at hand. I enclose back said cross-bill for you to prepair my answer, as my attorney here is very sick indeed, and unable to attend to any business. By refering to my answer to Sweet's bill, you will be able to prepair a proper answer to this bill, except as to the allegations of sale of some portions of the mortgaged premises. I have made a pencil margined memorandum, but will briefly state the facts here, so that you can prepair the necessary answer. In Sept., 1853, I gave a memorandum to Bishop & Co., to sell them one-half of the mortgaged premises, at what they had then cost me for principal, interest, assessments, taxes, &c., agreeing to take my pay in the bonds of the Green Bay, Mil., and Chic. R. R. Co., provided I perfected a title by the foreclosure of my mortgage. In July, 1854, Bishop & Co. became embarrassed; they then asked me to be relieved from
170 said memorandum, as it would be out of their power to comply with it if I succeeded in perfecting title under foreclosure of said mortgage. I agreed to do so. I also made a memorandum with Mr. Wheeler, in Sept., 1853, subject to one made with B. & Co. as aforesaid, to sell him one-third of my mortgage against Sweet, at its par value, interest, assessment, and taxes paid by me added. But I have never received one cent from either party on it This is all that I see that you need any new light on to prepair my answer.

Yours, truly,

RUSSELL SAGE.

TROY, 8 *Oct.*, 1853.

Messrs. WHEELER & Co.:

GENTLEMEN: Yours of the 3d came to hand last evening. See that Finch puts the mortgage under way as soon as he can. Tell Blossom I did not see Richmond in Buffalo, but expect to see him in Albany next Tuesday, when I will see what can be done.

Yours, truly,

R. SAGE & CO.

C. H. WHEELER, Esq.:

DEAR SIR: In answer to yours of the 11th, in relation to Sweet's claim, have to say that we entirely unwilling to pay any such sum named, and, as we feel to-day, would not give him one dollar more than it will cost to foreclose. We have yet to learn that he can get parties to step and advance the sum of money due; and if he does, then another question arises as to his right to do so; but at all events,
171 we will not pay any such sum, and as the writer wrote you from N. York, go and perfect foreclosure so soon as it can be done, and before that is brought about you will feel the pressure in the money market a little, as we do, or we shall be greatly mistaken.

Yours, truly,

R. SAGE & CO.

1053

TROY, *Oct.* 17, 1853.

Mess. WHEELER & Co.:

GENTLEMEN: Yours of the 12th and 13 are before us, and read with care. We are pleased to hear Blossom's views are so much like our own; but if they were not, we should feel unwilling to change ours, and we have now only to add, treat Sweet kindly, but have Finch go ahead as fast as he can, and all will be right.

Yours, truly,

R. SAGE & CO.

TROY, *Jan'y* 12, 1854.

Mess. WHEELER & Co.:

GENTLEMEN: Yours of the 27th is received. We have no objection to your paying the taxes in the way and under the advise of Mr. Finch as you suggest.

Yours, truly,

R. SAGE & CO.

TROY, *April 1st*, 1854.

CHAS. H. WHEELER:

DEAR SIR: We have been examining your list of lots purchased with the map, and are surprised at your purchases. When our Mr. Sage was at Milwaukee your instructions was to buy the lots in block 36 and 56, and river lots in block 64, if they could be got at a low price, as it was then talked they could. We feel you have 172 done wrong in making these purchases without first reporting what they could be had for, and the terms, &c. As it is, we do not want any *more lots bought* at any price before you first advise us of their No., location, price, &c., when we will decide what to do. We now want to know how you have taken the titles to each lot. Surely you will see the importance and safety of not taking title in all of our names. You had better arrainge to have them divided up, and take for our half in our names, and theirs in their own. You speak of this being a great bargain, and we suppose you knew; certainly you ought to, or else you should not have bought them. We therefore now offer them to you on you own account at cost, and hope you will take them, as we feel greatly disappointed in your purchase, and hope to hear by an early answer that you accept our offer, which will remove all our feeling about this matter; and in any future purchase of real estate you may make them on your own account. Suppose you should take title in joint names, and give bonds accordingly? You can readily see that in the event of failure and change of value of property, that we should be called upon to pay up on bonds and, perhaps, have nothing of value to show for it. We report feel greatly disappointed and disturbed about this purchase. We hope our fears may turn to your profit in your taking this on your own account, and thus release us of our anxiety, and we promise you in future we shall not be a party to any business or purchase that is not strictly confined to our legitimate and authorised business. Of course

I suppose you will see the importance of keeping the contents
173 of this letter to yourself. You know how sensitive the writer, as well as our Mr. Slocum, feels about departing from legitimate business and looking up funds in property of this kind, notwithstanding it may appear to be worth a very handsome advance, but we are to far off to watch and take care of it, and do not want the and anxiety to look after it. We write frankly our views, without imputing the least want of proper motives, but think you have acted inconsiderably in a matter involving so much responsibility. This, however, can all be made right by your assuming it as aforesaid.

Yours, truly,

R. SAGE & CO.

TROY, *Sept.* 2, 1854.

Mess. WHEELER & Co.:

GENTLEMEN: Yours of August 29th is just at hand, and read with care. You understand all the points about Blossom & Sweet, and can act understandingly. You had better have Place buy the tax script as suggested; but first advise with Finch about it. I see the L. S. R. R. Co. railroad iron is advertised to be sold in New York on the 6th, including what is in Milwaukee. I do not see that we are to be affected by its failure; on the contrary, it may aid in settling up our foreclosure. It strikes me it will have this effect.

Yours, truly, in haste,

RUSSELL SAGE.

174 TROY, *Sept.* 13, 1854.

Mess. WHEELER & Co.:

GENTLEMEN: Yours of the 8th is at hand. As to the Sweet and Blossom affair, you understand it fully, and I see but little to say to Sweet's proposition. If Blossom debt is good, I do not see what Sweet's interest is worth, nor do I see what his answer amounts to. His contract was dead, and I am as much surprised as you are at Finche's spreading it on record. You had better talk with Finch about this good-naturedly, and see what his reason are for having done it. B. will not interfere. We could undoubtedly buy Sweet's debts, but the minute we do it we shall have to fight Blossom, which I cannot see any wit in doing when he is willing to do as we talked in New York. See F., and write me.

Yours, truly,

RUSSELL SAGE.

Mess. WHEELER & Co.:

TROY, *Sept.* 14, 1854.

GENTLEMEN: Yours of the 11th is at hand. As to Sweet's proposition, do not favor it. If Blossom chooses to arrainge with Sweet, I have no objection, but would not advise paying anything more than we are bound to pay in the event of clear title, which is my mortgage to "B.," which you understand. If you should arrainge with Sweet, then Blossom's judgment and sheriff's deed stare you in the face. So I see their is but one course, and that is straightforward.

I would not suspect Finch without good cause. It is mixed up affair, and you must act accordingly. Advise with F., and do not let
175 him think you suspect him. If you think it best to advise confidentially with another counsel, I have no objection.

Yours, truly, in haste,

RUSSELL SAGE.

TROY, *Nov.* 23, 1854.

Mess. WHEELER & Co.:

GENS: On my return from V. T. I find your letters of the 17 and 18th. I am a little disappointed in Blossom's matters, but he knows what he is about, and we must know what we are about also. I am glad to hear your determination to follow our matter up until a decree is had.

Yours, truly, in haste,

RUSSELL SAGE.

TROY, *Jan'y 1st*, 1855.

Mess. WHEELER & Co.:

DEAR SIR: I hope you will get a decree soon, and get this wharehouse matter closed up.

Yours, truly, in haste,

RUSSELL SAGE.

TROY, *Jan.* 12, 1855.

Mr. CHAS. H. WHEELER:

DEAR SIR: After consulting with Mr. Slocum in relation to authorising you to bid a nominal sum for Blossom's interest in the wharhouse property, we have come to the conclusion to have you do so, provided Mr. Finch thinks it best. What we mean by a nominal sum is a few hundred dollars, or up $1,000, should circumstances seem to make it wise to pay it. In short, to exercise a sound discretion, under the advice of Mr Finch.

176 I hope you may succeed in bringing this matter to a close before spring.

Yours, truly, in haste,

RUSSELL SAGE.

TROY, *April* 24, 1855.

Messrs. WHEELER & Co.:

GENTLEMEN: Yours of the 19th is at hand. Mr. Slocum returned yesterday; says he saw Sweet, and had a long talk with him; thinks Sweet has a friend that is going to bid in the property, but thinks an arrangement could be made to avoid this, by giving a certain sum to Sweet, conditioned that we should get a decree for our amount, and sell the property, and pefect our title. I think he and I may come out there next week, and look into the matter, and see if something

of the kind may not be best. Of course you must keep all quiet, and treat Sweet kindly.

Very truly,

RUSSELL SAGE.

TROY, *April* 30, 1855.

Messrs. WHEELER & Co.:

GENTLEMEN: I have yours of the 25th, and note its contents. I have received from Mr. Finch Sweet's cross-bill; I shall write to him to draw a bill in answer to it. What do you think of idea of Mr. Slocum and myself coming out there in May, to try and arrainge with Sweet? Mr. Slocum thinks something might be done with him. Speak with Mr. Finch about it, and write me.

Yours, truly,

RUSSELL SAGE.

177 TROY, *May* 7, 1855.

Mess. WHEELER & Co.:

GENTLEMEN: Your favor of the 29th and 2d are at hand. I now think I shall arrange to be at Milwaukee on Saturday night, May 19th, so as to sit down and have Mr. Finch draw his answer. I have encloseed my Woodward note and mortgage, against Blossom, to F. and L., for foreclosure, and asked their advice as to our trying to make an arrangement with S. Mr. Slocum will write Sweet from here, at Grand Haven, so that he can meet us at Milwaukee, if it is not thought best to make an arrangement with him.

Yours, truly,

RUSSELL SAGE.

Think you had better not say much about renting wharehouse until we get further along with forclosure.

TROY, *May* 9, 1855.

Mess. WHEELER & Co.:

GENT.: Yours of the 2d, 4th, and 5 are at hand, and read with care. I now think I shall come out, and Mr. Slocum will accompany me, if possible, the last of next week. I want you to see or have some see Sweet, and let him know of our coming, so that he will be there. The same with Mitchell, as far as I am concerned. You may say to Mitchell that you expect me the last of next week, and that you understand from my letter that I wanted to see him, to advise with him about something, &c. Keep this to yourself. There is some financering going on, and we must be cautious and sure in what we say and what we do. Would not say anything more about renting wharehouse, for fear of its being used against us.

Yours, truly, in haste,

RUSSELL SAGE.

178 TROY, *May* 14, 1855.

Mess. WHEELER & Co.:

GENTELMEN: Yours of the 10th is before me. You must be cautious about renting wharehouse, as previously advised. This we can talk over when I come out. I may not reach there before Monday night, but hope to get there Saturday night. Mr. Slocum is not decided whether he can come with me or not, but is trying to arrange to do so.

Yours, truly,

RUSSELL SAGE.

TROY, *May* 17, 1855.

Mess. WHEELER & Co.:

GENT.: Your telegraph dispatch of yesterday, saying Mitchell in Troy, Friday, or Saturday, "Don't miss seeing him," came to hand yesterday p. m. I will remain here and see him. I have sent my answer to Sweet's bill, together with a letter to Mess. F. & L., saying, in substance, that if it was not right, to redraw it and send it back. Alo suggested the propriety to put off the suit for a week or so, untill after my interview with Mr. Mitchell, in hopes something might turn up, by which a conditional arrangement with Sweet might be made You had better see them.

Yours, truly,

RUSSELL SAGE.

TROY, *May* 18, 1855.

CHAS. H. WHEELER, Esq.:

DEAR SIR: Your dispatch saying, "See Mitchell; come Milwaukee; court sitting; Sweet here; adjust tittle; now or never." I expect Mr. Mitchell to night or in the morning, and after seeing him will decide what to do, and telegraph you accordingly.

Yours, truly,

RUSSELL SAGE.

179 TROY, *May* 19, 1855.

CHAS H. WHEELER, Esq.:

DEAR SIR: I saw Mr. Mitchell a few minutes last night, on his way to N. Y., and agreed with him to have the suit put over. I telegraph you this morning as follows: "Have agreed; Mitchell to put over; inform Finch & Emmons." Mr. Mitchell repeated what he said to you, as you state in your letter of the 15th, and said you offered to pay $10,000 for a clear title. I told him I thought we would do this. I have talked with Mr. Slocum, and he is in favor of it. But in order to get this we shall have to wait untill Mr. M. returns, as nothing can be done of any moment untill that time. In the mean time every thing must be kept quiet, as I will advise further after seeing him in N. Y. on Monday next. If I arrainge with him, he will write his lawyers, and I will write you and Mr. Finch, how to proceed in the future. I am satisfied we can't do anything without some such

course of action as this. This must be kept still, however, until all is accomplished. Now I have some fears about the renting of the wharehouse until we get through. I will consider it, and advise you hereafter.

Yours, truly,

RUSSELL SAGE.

TROY, *May* 23, 1855.

CHAS. H. WHEELER, Esq.:

DEAR SIR: Yours of 18th and 19th are before me. As to
180 the wharehouse suit, would say we cannot hurry it. I think my arrangement with Mitchell will succeed. In that I was to write Finch to have him co-operate with Emmons, to have the judgments bought up at 25c. I have written Finch accordingly. If Finch thinks he can get them better for me than Emmons, very well, as it will make no difference in the end, between Mitchell and myself, as this was the agreement. You can readily see that with this arrangement, we shall be quite sure to succeed with Mitchell at home. At any rate, we shall get a large and ful ldecree, which we could not get without this, and with the judgments in our own hands, it is almost a certainty that we shall get through just as we expect to. As to the renting of the wharehouse, would say I think it would have been better to have kept along as we are untill we get a decree and sale, and should prefer it now, if you can arrange with your man. If you cannot, then you must do the best thing you can, and keep as quiet as you possibly can. I think the least said the better. Mitchell will put all right with Sweet.

Yours, truly,

RUSSELL SAGE

TROY, *May* 15, 1855.

CHAS. H. WHEELER:

DEAR SIR: Your telegraph dispatch of yesterday, saying Mitchell, Clarendon House, Buffalo, Friday morning—we want ten thousand currency, was received last evening. In view of this we have decided
181 to telegraph you to have Mr. Mitchell come by the way of Troy, and that the currency would be sent. I shall have an answer prepaired for Mr. Finch, and send it on to-morrow, so that in case I do not come, as I do not now see it necessary, that he can go on with the suit, or get it put off, untill he can hear from me after the interview with Mr. Mitchell, who, by the bye, is the real man in power behind the throne, I really suspect. But this is confidentially. Besides, my answer may not be such a one as Mr. Finch wanted, and for this reason he may want to put the suit off long enough to draw a new one, which he should have done in the first place, and then I could have made such alterations as I thought necessary, to conform to the facts. Perhaps I can induce Mitchell to write back to have Sweet consent to a few days' delay, should his consent be necessary. I want you to see Mr. Finch, on receipt of this, and see if he thinks it very essential that I should come. If he does, I will come, and I may come even without it, but think not, as I feel

quite sure Mr. Slocum will not come, in consequence of his clerks being in Illinois for some weeks to come. If I can arrange with Mitchell, and Sweet acquiesces, it would enable us to get a decree and buy the property in. I may think it worth while to go to Buffalo Thursday night, to meet Mitchell, so that in case any arrangement should be made with him, I can advise you by telegraph or letter from there. In Mr. Slocum's interview with Sweet he intimated he had a responsible friend to protect his interest in the sale, &c.; and from this I infer it must be Mr. Mitchell, and in this think I am not mistaken. Of course, I should prefer it to be him in preference
182 to most any other man in Milwaukee, as I feel quite confident I can arrange matters with him. If the answer I shall send Fitch to-morrow should not be what he wants, him draw a new one and send it to me, and I will return it immediately; in the mean time he can get the suit put off long enough to get it back or let it go over, unless we succeed in making arrangements that is satisfactory. You know Blossom's sheriff's deed to Sweet's property is in existence, and nothing but a foreclosure and sale on my mortgage will give any one a clear title. I think you had better keep quiet about renting wharehouse for a while, and see what is best to do.

Yours, truly, in haste,

RUSSELL SAGE.

TROY, *June* 4, 1855.

Mess. WHEELER & Co.:

GENTELMEN: Yours of the 29 and 30th inst. are at hand, and read with care. Now, as to the renting of the wharehouse, would say I consider it risky to do so, and should favor keeping along in its full possession until we got a decree and sale. You can readily see what the effect of a $4,000 rent would have with a court or jury compaired with one of $2,000. I think you had better say to Mr. Butten that I own the house, and will not consent to rent it until my suit is ended, which I supposed would have been done at the present term; that he should have the preference of it so soon as this can be accom-
183 plished, &c. This, it strkes me, is clearly the most wise and polite course to take; certainly it is if we expect to get the property and keep down competition. It may be a little embarrassing to you, but thrice it me. The uncertainty of the suit is a sufficient reason. Besides, if he went in and we do not buy it, he could not stay; consequently the uncertainty to him would be ruin to anything like permanency in his business arrangements. Talk it over kindly with him, and I think you will be able to explain it satisfactorily.

Yours, truly,

RUSSELL SAGE.

TROY, *June* 7, 1855.

CHAS. H. WHEELER, Esq.:

DEAR SIR: I herewith enclose copy cross-bill in the Sweet matter, which F. & L. sent to me to answer. You can read my letter to them,

and then take *and* the bill to them to prepair an answer for me to sign, and forward it to me, and I will sign and acknowledge the same. I do not see that Bishop & Co., in your matter, is to hurt anything, on the contrary, strengthen my claim, as it shows I was willing to sell to them and to you, at the face of the mortgage, and the charges paid on the property, &c. If Finch can aid Emmons to get any of the Sweet judgments, hope he will do so, as it would be stregthening me to foreclose.

Very truly, yours,

RUSSELL SAGE.

184 TROY, *Sept.* 6, 1855.

Mess. WHEELER & Co.:

GENTELMEN: Yours of the 30, 31, and 2d inst. are at hand, and read with care. Mr. Mitchell was here on Tuesday, while I was in N. Y., which I regretted much. However, you can say to him I shall be out their about 1st October, or sooner if required.

Your, truly,

RUSSELL SAGE.

TROY, *Sept.* 8, 1855.

Mess. WHEELER & Co.:

GENTELMEN: I am sorry to hear of the purchase of debts against Sweet, but we must do the best we can.

Yours, truly,

RUSSELL SAGE.

TROY, *Sept.* 14, 1855.

Mess. WHEELER & Co:

GENTELMEN: Yours of the 10th is at hand, and read with care. I intend to leave here on Monday or Tuesday next, to come direct to your place, and will stay and see the end of the suit, if the end can be got at by negotiation or otherwise. I hope Mr. Mitchell, Emmons, and you, will have it already for closing up as previously arranged.

Yours, truly,

RUSSELL SAGE.

185 TROY, *Oct.* 4, 1855.

Mess. WHEELER & Co.:

GENTELMEN: I find yours of the 29th inst., on my return from N. Y. The acc. from Mr. Place are in. I do not see any general statement of taxes, insurance, wharehouse repairs, &c., made out, as we talked. I wish Mr. Place to make up such a statement, so that in case Mitchell and Emmons decide to allow us this sum—less rent of wharehouse—shall be prepaired to render them an acc. at once, so that a decree can be taken and this matter brought to a close.

Yours, truly,

RUSSELL SAGE.

1063

TROY, *Oct.* 10, 1855.

Mess. WHEELER & Co.:

GENTELMEN: Yours of the 6th is at hand, and read with care. I have a letter from Mr. Mitchell this morning, saying, on consultation, he was willing, so far as he was interested and could controll, to allow us to make out our acc. at what we had paid out, and 12 per cent. interest on it, and deduct therefrom $2,000 per annum for rent of wharehouse, provided I would allow decree to be taken in my name for full amount claimed, the money to paid on the day of sale; and further, that I would write Mr. Finch to aid in buying one or two judgments, which I promised to do when I was in Milwaukee. This is all we can hope to get by litigation, even if everything should go to our entire wishes; and as it will bring matters to a close,
186 Mr. Slocum and I are decidedly in favor of it, as I have no doubt you are, so you will please have statement made up at once and hand to Finch, so that he can arraing with Emmons to have a decree entered and the sale advertised. It is not so essential that you fix the exact sum we are to have, as we can do this any time before the day of sale. But what you want is first to make up a full statement of all their is due on the mortgage, including interest, assessments, wharehouse repairs, taxes, &c., &c. If their is any taxes now due, pay them and include them also, so that all may be included, and then deliver the acc. to Finch, who I will write to day as well as to Mr. Mitchell, so that a decree can be entered before the court adjourns. When you have made up the acc. that we claim, less wharehouse rent, enclose it to me before presenting it to Mr. Mitchell, so that we may be sure and get all in that we are justly entitled to. I will write Finch to keep quiet, and I do not know that it is best to let him understand the arraingment, for fear of his not doing just as he would if he thought the decree was entirely for my benefit. I will therefore enclose my letter to him in this letter, so that you can see just what has been written, &c.

Yours, truly, in haste,

RUSSELL SAGE.

TROY, *Oct.* 10*th*, 1855.

Mess. FINCH & LYNDE:

GENTELMEN: I have accepted a proposition by which you are to be allowed to take a decree for the full amount due on my bond and mortgage, against Sweet, including interest, assessments paid, taxes paid, insurance paid, wharehouse repairs, &c., &c., the
187 accounts of which will be furnished by Mr. Wheeler. You can call on Mr. Emmons, who will arrainge with you, so that you get the decree and the sale the last of December, or rather about 20th to 24th. I wrote your Mr. Finch, at St. Nicholas Hotel, N. Y., in relation to buying the judgments owned by Erastus Fairbanks & Co., Rogers, Catlin & Co., Leroy M. Wiley & Co., &c., and expected to have met him in N. Y. before I left for home, but found he had left before I reached there. If you can get any of these judgments

at a price not exceeding 50c. on the dollar, want you to do so, and draw on me at one day sight for the same. If you can get any of the judgments against Sweet, down to 1st Jan., 1851, at the rate aforesaid, should like it, as it would fortify me on the day of sale. If Mr. Emmons's aid will help in this matter, I have no doubt you can have it by asking for it. I am in hopes now that things are in a train to have this matter brought to a close; and for the accomplishment of this, I would advise keeping as quiet as may be necessary to the accomplishment of the object in view. If you get a decree, I shall make arrangements to be present at the sale. So soon as you see Emmons, write me how matters stand, and the prospects of getting the judgments in question.

Yours, truly,

RUSSELL SAGE.

TROY, *Oct.* 10, 1855.

A. MITCHELL, Esq.:

DEAR SIR: Your favor of the 6th is at hand, and has been read by Mr. Slocum and myself with care. While we have decided to accept your proposition in the matter of my mortgage against Sweet, viz: to make out an account of all sums of money paid out for
188 taxes, assessments, insurance, wharehouse repairs, &c., with 12 per cent interest, and the same in said mortgage, and deduct therefrom $2,000 per year for rent of wharehouse, upon condition that a decree for the full amount claimed due be taken in my name, and on the day of sale, you to pay the sum now due, less the wharehouse rent as aforesaid, we feel the rent of the wharehouse for the two first years, occupied by Wheeler & Co., should not have been included, as the risk we run in the business was full equal to it, considering the agreement we had with Sweet, as to the purchase of the property. But, for the purpose of getting the matter closed, we have decided to accept the propositions, and have written to Mess. Finch & Lynde to confer with Mr. Emmons, and have a decree taken as aforesaid. You will therefore please see Mr. Emmons, and have the matter understood, so that a decree be taken before the adjournment of the court.

Yours, truly,

RUSSELL SAGE.

TROY, *Oct.* 22, 1855.

Mess. WHEELER & Co.:

GENTELMEN: Yours of the 16th and 17th are before me, and read with care. Mitchell writes me that he thinks Finch indifferent about aiding in getting up a few judgments owned by his clients, and infers he feels sore because the whole matter was not entrusted to him, but advises that I treat him kindly and courteously. You know well enough that he could never have got through but for the arrangement we have made, even if we do with it; so I want you to say, if a
189 proper opportunity offers, that the arraingement is the best one that could be had under the circumstances of the case, and entirely satisfactory, and that we will explain to him, before the sale, so

that he will see it as we do. I would not say more to him than you deem necessary, as I fear he has been rather indifferent ever since we had him in N. Y. I do not see anything in your statement but what is right, except the omission of what I paid for Walker's judgment, which I will write Finch about to-day, as this will swell the amount some $500.

Yours, truly,

RUSSELL SAGE.

TROY, *Oct.* 29, 1855.

Mess. WHEELER & Co.:

GENTELMEN: Yours of the 23d and 24th are before me I do not see how I can come before the 19th November, nor do I see any necessity for it. I wrote Mitchell about the decree, and suppose and Finch will, upon it, and have the property sold in December, as previously suggested. Will write to Emmons or Mitchell again to-day on the subject. I expect to go to Toledo on the 15th Nov'r, and will come out there if you want me, but prefer not to come before the sale in December.

Yours, truly,

RUSSELL SAGE.

TROY, *Oct.* 31*st*, 1855.

Mess. WHEELER & Co.:

GENTELMEN: Yours of the 27th is at hand, and read with care. As to the Sweet matter, would say you can testify as to the point Finch raises, and that is, that the nett earnings of the wharehouse is not equal to anything like the rent, and, if my memory serves me, they do not amount to much, if any, more the expenses. *Hope you can make them up with Mr. Place, so that they will not nett more than*
190 *expenses.* Unless you can do this, it may not meet the views of our friends there. See that Finch does not attempt to embarrass the decree for the full amount claimed. I say this for fear of his jealousy of Mitchell, which I discovered in Lynde when I was last there. I do not see anything that you cannot arrange there, at this time, just as well as if I was there.

R. SAGE.

TROY, *Febr'y* 23*d*, 1856.

Mess. WHEELER & Co.:

GENTELMEN: Now that the warehouse business is closed up, I want you to enclose our agreement to sell your one undivided third of the mortgage against Sweet; you can mark, across its face, *canceled and void.*

Yours truly,

RUSSELL SAGE.

MILWAUKEE, *Feb.* 27, 1856.

Hon. R. SAGE:

DEAR SIR: No letters from you since you left Milwaukee. Mr. Place has made up statement of warehouse property business, and will forward it to you, which I think is correct; it makes me loose something between 4 and $500, by my purchasing an interest in the mortgage; the loss is in being charged the interest on the full bill of over $7,000, of Sept., '54, and only getting $2,000 rent.

Yours, very truly,

WHEELER & CO.,

MILWAUKEE, *March* 3, 1856.

Hon. R. SAGE:

Your note, 26th inst., from N. Y., is received, carefully perused. Enclosed please find the agreement in regard to warehouse property contract, "cancelled and void," and signed, "Yours, truly, C. H. Wheeler."

191 I propose to sell to Mess. Bishop & Company, as soon as I can perfect the title by foreclosure of mortgage, one undivided half of the brick wharehouse, and lots Nos. 4, 5, 6, and 7, in block 54; and lots No. 3, 5, and 8, in block 55; and lots No. 11, 12, 13, and 14, in block 35; and fractional lot No. 6, containing $31\frac{40}{100}$ acres, in section 33, town. 7, range 22; all in the fifth ward of the city of Milwaukee, (less a small portion sold in foreclosure of mortgage by Alexander Mitchell,) for the sum of thirteen thousand five hundred dollars, ($13,500,) said Bishop & Company, and myself, to sell to the Green Bay, Milwaukee, and Chicago Railroad Company lots 3, 5, and 8, in block 55, for the sum of four thousand dollars, ($4,000;) and a strip of said lot No. 6, commencing on the Milwaukee river, at a point four hundred feet north of the south line, running thence southeastly along the wharf line of said river to the south line of said lot; thence west, along said south line far enough west to include by rectangular lines, on the southwest and north, five acres of ground, for the sum of one thousand dollars, ($1,000,) making the sum due to said Sage of sixteen thousand dollars, ($16,000,) for which I will take in payment the first mortgage bonds of the Green Bay, Milwaukee, and Chicago Railroad Company, issued or to be issued by said company on that portion of their road between the city of Milwaukee and the Illinois State line, bearing eight per cent. interest, payable semi-annually, principal and interest payable in the city of New York in ten years, at ninety cents on the dollar; with the understanding and agreement between said Bishop & Company, and myself and associates,

192 to have a joint and one-half interest in any purchase of blocks or lots in said fifth ward of said city; said lots to be purchased by the concurrence of said parties. Said Bishop and Company, and myself, agree to give to said railroad company the right of way over and through said fractional lot No. 6, on a line (200) two hundred feet west from the wharf line on said Milwaukee river, one hundred feet (100) wide, to be used for the track or tracks of said railroad, free. I agree with said Bishop & Company to proceed at once, and

1067

to foreclose my mortgage in chancery, and perfect my title to said premises and lots described aforesaid, and to accomplish the same as soon as it can be done in due course of law. It is further agreed between said Bishop & Company and myself that said Bishop & Company reserve the right to pay me the said sum of sixteen thousand dollars ($16,000) in cash, in place of said bonds; if they elect so to do, on the perfecting of said title by me, and the delivery to them of a deed for the lots and land aforesaid. I hereby appoint Charles H. Wheeler, of said city of Milwaukee, my agent to act in my name and place in connection with said Bishop & Company, in the purchase of blocks or lots in the fifth ward, as referred to in the preceding part of this agreement; and to purchase such other lands and lots as he and they may agree upon.

Dated Milwaukee, September 26th, 1853.

RUSSELL SAGE.

We hereby accept of the above agreement and stipulations of Russell Sage, and agree to pay him the sum of money or bonds named in the above agreement, at the time and manner therein expressed.

Dated Milwaukee, September 26th, 1853.

BISHOP & CO.

The word "assoate," named in the above agreement, embraces Hiram Slocum, of the city of Troy, in the State of New York,
193 and Charles H. Wheeler, of the city of Milwaukee, in the State of Wisconsin.

RUSSELL SAGE.

MILWAUKEE, *Oct.* 8, 1853.

Mess. R. SAGE & Co:

GENTELMEN: Mr. Sweet says to Mr. Reed to-day that he could perfect title to property without foreclosure of mortgage, and that he would do for ten thousand dollars, if he could not get something more out of it; should try to have some one redeem for him; will see him and find out his proposition, and how he can perfect title, &c., and write you more fully.

Yours, truly,

WHEELER & CO.,
Per CA. PLACE.

MILWAUKEE, *Oct.* 11, 1853.

Mess. R. SAGE & Co., *Troy, N. Y.:*

GENTELMEN: Had conversation this morning with Mr. Sweet; says he shall try and have some one redeem, and knows where he can get the money; that the property was worth $90,000, as other property was selling, and wanted $10,000 for his aid in perfecting title, which he says he can do, but did not say how, but would tell at the proper time. I remarked to him that it would be no object to him to redeem, as his judgment creditors would take it all from him again. He said he knew it, but in all human probability he should defend. I re-

marked that his services might be worth something to you in perfecting title, but no such sum as he named. The two oldest judgments *vs.* Sweets were confessed by him, one to Blossom, for some $14,000, the other to Edgerton, for about same amount, and, I suppose, he controlled both of them; if so, there is where he intends to get his hold, so I think if you can secure his *his* quietness, and get
194 those judgments assigned to you, that you would be safe from any creditors; and now I am of the opinion that if terms could be made with him for $3,000, payable when title is perfected, it would be a good thing to do. Have had conversation with Finch; he thinks so too, and, I suppose, has written you, so let us hear from you what you *what what you* think.

Yours, truly,

WHEELER & CO.

MILWAUKEE, *Oct.* 13, 1853.

Mess. R. SAGE & Co.:

GENTS.: I spoke with Mr. Blossom about Sweet's proposition; says go ahead with foreclosure; thinks he can make matters easy with him. Finch is making the necessary papers.

Yours, truly,

WHEELER & CO.

MILWAUKEE, *Nov.* 26, 1853.

Messrs. R. SAGE & Co.:

GENTS: Mr. Sweet is defending the suit of foreclosure of wharehouse property; can't imagine what he does it for, unless it is to make you pay him for keeping still, or to tave it off until the property should rise more in value. Sweet is *willfull.* The taxes on lot 6, s. 33, 31 acres, never have been paid by us in full. When we compromised, we included all, and got receipt for same. Fitch says we can't recover only what we actually paid.

Yours, truly,

WHEELER & CO.

MILWAUKEE, *Dec.* 27, 1853.

Mess. R. SAGE & Co., *Troy, N. Y.:*

GENTS.: We have not paid the taxes, but will advise with Mr. Fitch whether it is best to pay them. My opinion is that's best to pay, as there will be no difficulty in getting the bill amended so as to get them in, as well as some other small matters, so as to swell the judgment as large as possible.

Yours, truly,

WHEELER & CO.

195 MILWAUKEE, *Dec.* 30, 1853.

Mess. R. SAGE & Co.:

GENTS: The taxes we have concluded not to pay, until we find we are going to keep the property.

Truly, yours,

WHEELER & CO.

1069

MILWAUKEE, *Apr.* 29, 1854.

Mess. R. SAGE & Co., *Troy, and Whashington:*

GENTS.: I have conversed freely and fully with Mr. Slocum about the foreclosure of your mortgage, and the propriety of having Mr. Finch going to N. Y. and Boston to buy up judgments. You say you are advised that Mr. Sweet is going to make more trouble than was anticipated. Now, we don't know what the nature of that advise is, but suppose that Sweet must have said to Blossom, (and that your advise comes from Blossom,) that his sheriff sale was not good, from the fact that there was no consideration for the judgment on which the property was sold, and if he undertook to perfect your title by quitclaiming his to you, that he would set his creditors at you in chancery to recover these dues. If this is so, it will make a long, expensive lawsuit, which we should avoid if possible. Again, it is highly important that there should be a speedy termination of the suit, if we intend the L. S. R. road to locate depot grounds on said property. Now, we think that it would be best to make terms with Sweet, provided it could be done on such terms as would be fair to entertain. I, for my part, would give $2,000 to have the title perfected at once. How if you could arrange by contract with Blossom and Sweet? Blossom to quitclaim, and Sweet to stop defence Let us have a decree, and sell the property, and at the expiration of time of redemption for himself and creditors, to pay him a certain
196 amount of money which we could agree not to exceed $6,000. I should advise to do so. Blossom and Sweet then would say to the creditors that the time of redemption had run out, and that the judgments on which it was sold was good and valid, and that the transaction as between them was sound. This position staring them in the face, and you then wishing to buy their judgments could do so at your own price. I have no doubt, if we get Sweet's co-operation, that we can get this matter closed up a very short time. These few suggestions I hope you will think of, and write me what you think of them. Mr. Sweet and Blossom are now absent from this place, and have been for nearly three months. Have not yet seen Finch in relation to this matter; until I hear from you again, shall not, as I am not decided yet how far it will do to open to him.

Yours, truly,

WHEELER & CO.,
Per C. H. WHEELER.

MILWAUKEE, *May* 24, 1854.

Hon. R. SAGE, *Washington:*

DEAR SIR: Your telegraph of 23d came to hand last eve., "Send Finch, N. York immediatly; meet at St. Nicholas." Mr. Finch was of town at the R road celebration at Madison, at the opening of the road at that place. He came in this morning; have arranged with him to start Friday morning, and he will be in N. Y. Monday or Tuesday. He will have memorandum of all the judgments vs. Sweet

with him. I telegraph you to day, "Finch starts Friday—N. York, Monday or Tuesday."

Truly, yours,
C. H. WHEELER.

197

MILWAUKEE, *May* 29, 1854.

MESS. R. SAGE, & Co., *Troy*:

GENTS.: Mr. Sweet has returned. Tells Reed that Blossom & Mitchell have combined to buy him, but they will find him a different man than they have ever had before to deal with, &c.

Truly, yours, WHEELER & CO.

MILWAUKEE, *Jun*27 , 1 854.

Hon. R. SAGE,, *Washington:*

DEAR SIR: Mr. Finch is making terms with S.'s creditors, and is doing it as fast as is prudent. I told him of Blossom's purchase of S.'s interest in the property at sheriff's sale, and that the time of redemption had run out both as to creditors and S., and that there was no earthly chance for them, and to use that lever to buy cheap, which he will do, and he sees the force of it. He now is in negotiation for the two largest judgments. Shall have something definite soon. I remain, very truly, yours,

C. H. WHEELER.

MILWAUKEE, *July* 1, 1854.

Hon. R. SAGE, *Washington:*

DEAR SIR: Finch tells me that Mr. Johnson, Sweet's former partner, is in N. Y., offering to buy up these judgments, offering 2 p. c. on the dollar. We don't know it happens, but suppose Sweet sent him. It is most certain that either S. or J. have no money. Mr. F. has written them fully the position of their affairs, and that he has no idea they can pay anything; also asking them how they propose to pay and as they are only offering 2 p. c. on the dollar, Mr.

198 F. thinks it will help us rather than retard us in the purchase. There is to be a special term of court held during this month, at this place for the purpose of disposing of chancery business. I told F. not to leave anything undone that would facilitate the getting of a decree. F. thinks he will get a decree this time, which I hope he will. Blossom wants to know when you are coming to Milwaukee. He says there is nothing, in the way of perfecting title to the wharehouse property, except you and him agreeing on the terms, as he holds sheriff's title, and you the mortgage, and that the two makes a perfect title, which I have no doubt is so, and so says Finch. I told him I thought you would be out in August. B. says he would like to arrange the business before long as they want to make a definite location of L. S. R. R. depot grounds. He still wants F. to obtain those judgments—asking about them every day; urging up to have F. prompt in the case of course. He is doing as fast as possible.

Very truly, yours, CHAS. H. WHEELER.

MILWAUKEE, *May* 17, 1854.

Mess. R. SAGE & Co., *Washington:*

GENTS: Our Mr. Sage's of the 9th inst. came to hand last eve.

Contents perused with care. Have had conversation with Mr. Finch; remarked to him that you wished to see him, but did not say for what purpose. He said he was going east after this term of court. I will, before he leaves, make arrangement with him to meet you in 199 N. Y., and write you when. He further says he is doing all he can to get a decree during this term of court, and that he thought it important that it should be closed up soon (as the price was, or worth of property was, rapidly increasing,) for our interest, and followed by saying he had $3,000 of the first judgment *vs.* Sweet, a lien on the property, which we better buy. Of that, however, I gave him no encouragement. Mr. Henry Williams said he understood from Mitchell that Sweet was going to try to get the property again, and expressed a friendly feeling towards us, and hoped we would be able to lick him out, as he expressed it. Sweet was a great rascal. So it seems to me that Mitchell knows about Sweet & B. troubles, if any, and that Sweet has advised Mitchell about his situation in the matter.

Blossom & Sweet have both sworn, so it is said, in a court of chancery, that B. let him have $36,000 for the judgment, and Sweet to the receiving of it. These points may assist you in making arrangements with F. when you *you* see him. When you see him (Finch) I hope you will make or come to some conclusion in the premises and act on it promptly.

Yours, &c.,

C. H. WHEELER.

MILWAUKEE, *Apr.* 8, 1854.

Mess. R. SAGE & Co., *Troy and Washington:*

GENTS: Yours, 31st inst., and our Mr. Sage of April 1st, from Troy, are at hand, and contents carefully noted. In answer to the proposition of the real estate purchases, would say that I will relieve you of your interest in said purchases, by taking them to my own account. The three thousand (3,000) dollars paid by Wheeler & Co. on said purchases will be all that I shall want to meet the engagement, and I have no doubt but that I can pay that back during the season, with interest.

Very truly, yours,

CHAS. H. WHEELER.

MILWAUKEE, *July* 17, 1854.

Hon. R. SAGE:

DEAR SIR: Yours, 8th inst., also your telegraph of 11th inst., are at hand. I have seen Jud. Hubbell to-day, and he says he shall hold special term the first and second week in August to dispose of chancery business, at which time I have no doubt but you get decree on the mortgage.

Mr. Finch shew me letters from Sweet's creditors in N. Y. of such tenor that I said to him to close negotiations for judgments, and to get decree as soon as possible. They ask 100 cents on the dollar, without interest, which will *never do.*

Blossom is now in N. Y., looking after Lake Shore R. R. interest.

He telegraphs us all is right, and has sent money to pay up estimates by special messenger, which has arrived and estimates paid.

Yours, truly,

C. H. WHEELER.

Fourth July, 1854.

Hon. R. SAGE, *Washington:*

DEAR SIR: Friend Blossom started for N. Y. last eve. He will telegraph you at N. Y. for you come there to see him. Probably you can agree with him for his sheriff's title to the wharehouse and property. Report says Scuglers have suspended. B. is to look after L. S. interest if it needs it, which we hardly think necessary, as they were not mixed up with the enterprise; at least, so we understand it.

I remain, very truly, yours,

C. H. WHEELER.

OFFICE OF THE MERCHANTS' MUTUAL INSURANCE COMPANY,
Milwaukee, Apr. 26, 1854.

Hon. R. SAGE:

Yours of 21st inst. is at hand, and contents perused. Mr. Finch is now at Detroit, and will return on Friday, when I will see him
200 and arrange with him to carry out your suggestions. He could not possibly leave until the court adjourns, which will set next week, (so Mr. Lynde says.) Mr. Finch has done all that has been done in the suit, so, of course, said but little to him. The cause will probably come up during this term of court, and if the case stands as you fear, Sweet will most certainly get more time by having it put over. Will counsel with Finch the first opportunity and write you the conclusion at once.

Very truly, yours,

C. H. WHEELER.

If Blossom purchase at sheriff's sale is not good, your place is the only one to meete the exigencies of the case, and must be carried out.

C. H. W.

MILWAUKEE, *Aug.* 29*th*, 1854.

Hon. R. SAGE, *Troy, N. Y.:*

DEAR SIR: I think there is a game—an intrigue—in the defence of which Finch writes, against the wharehouse property. Blossom says that he has put in no defence; whatever has been done, has been done at the instigation of Sweet and others, and that Sweet is now in answer, and not him, and that he has nothing to do with it. There may be collission of parties that we little expect. In a little time I will find all out and keep you advised.

Yours, truly,

WHEELER & CO.

P. S.—Blossom says Sweet is ugly, and is determined to make you all the trouble he can.

C. H. W.

MILWAUKEE, *Sept.* 6*th*, 1854.

Hon. R. SAGE:

202 I have been to clerk's office, and read the answer Sweet has put in. He denies that there is as much due as set forth in your bill; that the rent or use of warehouse for three years is worth twelve thousand dollars; also, that he is entitled to a share of the earnings and profits of the business, and that is $100,000, and that there should be something coming to him besides cancelling the mortgage. The answer is for Sweet, and no one else. I also have read your bill, and find that Finch has set forth in full your quitclaim deed, and contract with Sweet for wharehouse earnings. I don't know but that it is all right; at least, it seems to me to be superfluous. If brought at all, should come out in defendant's answer. It seems like buying the question. It would be my way to foreclose on the mortgage, and have kept those other matters back. Sweet has been to me to see what we would do, or how much we would pay to have the title perfected. He made no real proposition, but thought if he could get out of you some 8 or $10,000, he would wipe out all his old judgments, and so give you clear title. Finch has expressed a desire to have the judgments bought up, or seemed disappointed when we stopped negotiations for the judgments.

Yours, truly,

WHEELER & CO.

MILWAUKEE, *Sept.* 11*th*, 1854.

Hon. R. SAGE:

DEAR SIR: Mr. Sweet says that he has figured up, and finds he can cancel all obligations (and that there is about $100,000,) for $12,000, and that if you were disposed to take hold and give paper to that amount, on 3, 6, 9, and 12 months, he could clear the property in twenty days. Also, there is parties here who have

203 proposed to him to raise what money is necessary to pay your mortgage, and buy up the other obligations, and divide with him what they could make out of it. I am of the opinion, and I say it to you in confidence, that your attorney did not crowd the suit at the last term with sufficient energy. If he had, he could have got the decree. I say it to you, as the fraternity say, "on the square," and there is no mistake about it. There has been some collusion for others' benefit somewhere. If I could see you, I could tell you, so you would see through the whole arrangement better than I can on paper. But you now have enough to put you on the alert.

Very truly, yours,

WHEELER & CO.

MILWAUKEE, *Sept.* 11*th*, 1854.

Hon. R. SAGE & Co.:

DEAR SIR: We shall buy to-day the tax certificates on wharehouse property, in Horace's name, and then get 25 per cent. int. on top same.

Truly, yours,

WHEELER & CO.

MILWAUKEE, *Oct. 7th*, 1854.

Hon. R. SAGE:

DEAR SIR: I think you better take Blossom's *quitclaim deed* now, stipulating the payment when the *creditor's bill* is cancelled. However, don't know as could be done without subjecting him to a fine, &c., for contempt of court. It may be as difficult to get the bill out of the way as it is to get decree on your mortgage. But I think it best for us, if we can, to controll Blossom's title *now*.

Very truly, yours,

WHEELER & CO.

There is no earthly doubt but that the wharehouse property is worth $50,000, nor but that it would seam for that now, with a fair time to pay for it, although I do not propose to buy, and the estimated value is even more than $50,000.

204 MILWAUKEE, *Nov.* 18, 1854.

Mess. R. SAGE & Co.:

GENTS.: Have called to see Finch twice within a week, but have not found him. Hubble holds a term for chancery business the first and second week in December, and I will try myself to see if we can't get that case disposed of. H. told me that if it had been properly attended to it would have been disposed of last summer. Going to look after it myself next term, and if delay, will know the wherefore.

Yours, truly,

WHEELER & CO.

MILWAUKEE, *Jan'y 1st*, 1855.

Hon. R. SAGE, *Troy and Washington:*

DEAR SIR: Mr. Finch says that the creditors are filing answers in your wharehouse property case, but he thinks he can induce the court to make them come to a hearing this term. Hope he will.

Yours, truly,

WHEELER & CO.

MILWAUKEE, *Jan'y* 9, 1855.

Hon. R. SAGE, *Troy and Washington:*

DEAR SIR: Mr. Finch says that your case is set down for argument Thursday morning, and thinks he can stave off the opposers and get a decree, which will be as large as he can get. He advised not to buy Bloomer's title first, as Sweet's creditors would have the same rights in our hands as in B.; besides, B. creditors would have 26 months' redemption, and that B.'s title would be cut off, as he was made a party to your bill, and as to him it stands confessed.

Very truly, yours,

C. H. WHEELER.

205

MILWAUKEE, *Jan.* 13, 1855.

Hon. R. SAGE, *Troy and Washington.*

DEAR SIR: The warehouse can stand adjourned for one month, the defendants paying costs and their testimony to be then closed.

Yours, truly,

WHEELER & CO.

MILWAUKEE, *Jan.* 18, 1855.

Hon. R. SAGE, *Troy and Washington.*

DEAR SIR: Mr. Finch thinks we had better pay the taxes on warehouse property, and mend the bill by putting them in together with last year's taxes on repairs, &c., which we shall do during this week.

Yours, truly,

WHEELER & CO.

MILWAUKEE, *Febr'y* 5, 1855.

Hon. R. SAGE, *Troy and Washington.*

DEAR SIR: Sweet is trying to make some defence in your chancery suit of warehouse property, and I think he has given up all points but this; that is, to make the decree as small as possible by proving what the rent of warehouse was worth while we have occupied, which will, if he gets it allowed, lessen the judgment. He has not as yet had any evidence taken, but is around amongst the warehouse men making enquiries what is it worth, and saying to them to think of it, as they may be called upon to testify. We shall look to it, and do the best possible.

Yours, truly,

WHEELER & CO.

206 MILWAUKEE, *Feb.* 6, 1855.

Hon. R. SAGE, *Troy and Washington.*

DEAR SIR: Rumor says Sweet has sued out a subpœna for me in the warehouse case, but as yet I have not been served on. "We shall see what shall see.

Yours, truly,

WHEELER & Co.

MILWAUKEE, *Febr'y* 12, 1855.

Hon. R. SAGE, *Troy and Washington.*

DEAR SIR: Judge Hubbell court, Febr'y term, commences this morning; chances are poor for disposing of your warehouse case this term, as Sweet has filed a cross bill for you to answer; also has induced his creditors to file a cross bill *vs.* you. Now if the court entertains either or both of them, your case will unavoidably go over this term, and you will have to answer. The bills are filed, in our opinion, to stave off and given time, not they ever expect to recover. He

has also given notice to take testimony in your bill, as to worth of rent of warehouse, and for the last three years. Finch thinks the testimony irrelevant in the case, and that Hubbell will rule it out. He has some warehouse witnesses that will affirm to 4,000 a year, others at 2,500 to 3,000. I can get plenty to rebut, which will put it at $2,000, if necessary, altho' Finch says it is useless. I will see to it. Finch says Sweet ought to be indicted for perjury, as he has affirmed in other bills that he had no interest in any property or any ac., and now affirms that he has. Will keep you fully posted as the
207 case progresses.

Yours, truly,

WHEELER & Co., per R.

MILWAUKEE, *Feb.* 16, 1855.

Hon. R. SAGE, *Troy and Washington.*

DEAR SIR: Have just seen Finch & Lynde, who say Judge Hubbell has consented to take the testimony in the warehouse case in open court some day next week. I suppose it will only relate to the worth of rent. I shall be on hand.

Yours, truly,

WHEELER & Co.

MILWAUKEE, *Feb.* 26, 1855.

Hon. R. SAGE, *Troy and Washington.*

DEAR SIR: Nothing new in warehouse case, and I begin to think that we will not get a hearing this term of court. These chancery suits are long winded. However, we shall make every effort to get a hearing before this term is over.

Yours, truly,

WHEELER & Co.

MILWAUKEE, *March* 5, 1855.

Hon. R. SAGE, *Troy and Washington.*

DEAR SIR: Nothing new in your case. Finch thinks he will reach it this week; also says that Sweet's bill is nothing but what was in his previous answer to your bill.

Yours, truly,

WHEELER & Co.

MILWAUKEE, *March* 16, 1855.

Hon. R. SAGE, *Troy, N. Y.*

DEAR SIR: Your warehouse case will not be reached this term of court. The time has all been consumed this term in trying
208 criminal cases until yesterday, and the court adjourned to-morrow, and will sit again the first Monday in May next.

Yours, truly,

WHEELER & Co.

MILWAUKEE, *Apr.* 14, 1855.

Hon. R. SAGE.

DEAR SIR: After giving yours of the 7th mature deliberation as regards the help, I have come to this conclusion: that it is better for us to ship our property forward as fast as the rate of freight would meet our view, at any rate we could get all closed out by first July, and then discharge all our men and rent the wharehouse, which I can do, (I have no doubt,) at $3,000 per annum, commencing on the first July, which will lessen our expenses two months for the year. We could operate just as much, if we were so inclined, without the expense of running the house, and pay storage.

I remain, very truly, yours,

C. H. WHEELER.

MILWAUKEE, *Apr.* 10, 1855.

Hon. R. SAGE, *Troy, N. Y.*

DEAR SIR: Enclosed please find notice of Sweets *vs.* Sage.

W. & CO.

MILWAUKEE, *May* 1*st*, 1855.

Hon. R. SAGE.

DEAR SIR: I am glad you are coming out here, and that you see the importance of getting an adjustment of the wharehouse title, altho' I am afraid you will not see Mr. Sweet, as he has gone to Grand Haven to finish a light-house. I think I have found a responsible man 209 who will take the wharehouse at $4,000 rent; when you get here we will talk the matter over and give him a lease, say for one year, with privilege. The property is variously estimated from $50,000 to $100,000, and I am firmly of the faith that it could be sold for the first amount at once, with a reasonable time to pay for it. Higby sold his wood warehouse, with only 40 feet of ground, for $15,000, and this is worth six of it, saying nothing about the other lots of land.

Yours, truly, C. H. WHEELER.

MILWAUKEE, *May* 5, 1855.

Hon. R. SAGE.

DEAR SIR: I have seen F. in regard to you and Mr. Slocum coming here, he thinks favorable of it. But said you made a mistake in not buying up those old judgments. However, he now thinks if you can buy Sweet's peace, that the creditors of Sweet could be bluffed off by getting a large decree, and taking a proper time to sue it, and the price of Sweet's peace to be contingent to the final adjustment of title. Sweet is now at Grand Haven. I will ascertain when he will be home and advise you, so that you can be sure to meet him. I have just returned from Sweet's residence, and find he is expected to-morrow, and will, I think, remain home some two (2) weeks; as soon as his vessel is completed which he is now building he will go to Lake Superior, and probably be gone most of the summer, as he has several

light-houses to build; so you had better come out next week, or at farthest week after next, and you will almost be sure to see him.

Yours, truly,

WHEELER & CO.

210 MILWAUKEE, *May* 10, 1855.

Hon. R. SAGE, *Troy, N. Y.*

DEAR SIR: I have promised to lease the house, commencing 1st July, at $4,000 per annum, for one year, with privileges of 2 years more at same rate, in case we have control of it. The party is good. We keep joint possession with him by keeping our office in the house and giving him what storage we have, at such prices as we may agree. So we are waiting for you and Mr. Slocum to come out to give lease and fix prices for storage and other small preliminaries. Sweet has not yet returned from Grand Haven; is expected daily.

Yours, truly,

WHEELER & CO.

MILWAUKEE, *May* 12, 1855.

Hon. R. SAGE, *Troy, N. York.*

DEAR SIR: Mr. Sweet returned from Grand Haven last evening, and I have no doubt but that you will see him next week, Saturday. I wish, if possible, to have an arraingment made. I have agreed, as formerly advised, to rent the house at $4,000 per annum, but it is not made public, for the reason it might interfere with an adjustment with Sweet. So be on hand and try for a settlement.

Very truly yours,

WHEELER & CO.

MILWAUKEE, *May* 15, 1855.

Hon. R. SAGE.

DEAR SIR: We have just telegraphed you as follows: "Mitchell in Troy Friday or Saturday; don't miss seeing him." I have just seen Mr. Mitchell, and he has agreed to go by Troy and see you. He has much gratitude for the favors you have done him, and in no
211 way will he interfere in your matter with Sweet to your damage, but will do all he can to further our ends, and I have no doubt but that he can do much to help us to perfect our title, and he is of the same opinion. He will when with your help; you to arrainge for the final consumation of title.

Yours, truly,

WHEELER & CO.

MILWAUKEE, *May* 18, 1855.

Hon. R. SAGE, *Troy, N. Y.*

DEAR SIR: We have telegraphed you to-day as follows: "See Mitchell; come to Milwaukee, court setting; Sweet here; adjust title now or never." I have had long conversation with Finch in regard to our suit with Sweet. I have ordered him to buy what judgments

that he represented, some 5,000 dollars at 25 to 30 cent on the dollar, if he could. If we do not make some arraingments with S. to stop defence and let us have a decree this term, we will, in the ultimation, have to take the money on the mortgage, as the property has risen more than 100 p. c. within the last two years, and we came to the conclusion that you and Mr. Slocum should come out at once and try to perfect something. Sweet will be here for the next six or eight days before he leaves for Lake Superior, to be gone some four months.

Yours, truly,

WHEELER & CO.

WALKER HOUSE, MILWAUKEE, *May* 19, 1855.

Hon. R. SAGE.

Yours 14th is at hand and contents duly noted, also your dispatch of to-day: "Having agreed, purchase put over, inform Finch & Emmons." I cannot see how we are to avoid of letting Mr. But-
212 ters having the warehouse to run as I have promised it to him, at $4,000 per annum; possession first July or August.

Yours, truly,

WHEELER & CO.

MILWAUKEE, *May* 19, 1855.

Hon. R. SAGE.

DEAR SIR: I dislike this delay in our warehouse suit as the property is increasing in value so fast, and now the L. S. R. R. is done it will give a fresh impetus, and if we do not get a decree pretty soon there will be hordes of speculators that will run the property, on sale, to fifty thousand dollars, if not more.

Yours, truly,

WHEELER & CO.

MILWAUKEE, *May* 29, 1855.

Hon. R. SAGE, *Troy, N. Y.*

DEAR SIR: Mr. Butters says he has made arraingments for capital and expects us to give him the running of warehouse. He has possession of Newhall's house and some 18 months lease are yet to expire. I told him not to part with his for fear something might turn up so that he could not have this. I have made a fair trade for him to have it, and we must buy off or let him have it. He wants to take possession the first of July.

Yours, truly,

WHEELER & CO.

MILWAUKEE, *June* 1, 1855.

Hon. R. SAGE, *Troy, N. Y.*

DEAR SIR: Yours 27th from Albany is at hand and contents noted with care. I have seen Bishop and some conversation about the warehouse property contract. On his return east he will call on
213 you and give up the contract or join in cost of perfecting title. If he gives it up we will have to give him bonds to see him

harmless as to Blossom's interest, which I have promised to do in case he cancels contract. He may elect to join in expenses of perfecting title, if so let him, although I think that the contracts amount to nothing unless you get the property for the amount the court decrees; if you pay more I doubt very much his recovering any damage in case you do not deed to him.

Yours, truly,

WHEELER & CO.

MILWAUKEE, *June* 8, 1855.

Hon. R. SAGE, *Troy, N. Y.*

DEAR SIR: Yours of the 4th and 5th are at hand and noted. I think I can make a satisfactory excuse to Butters on warehouse contract for rent by promising house as soon as we get title, although I had rather have the $4,000 rent than run it.

Very truly yours,

C. H. WHEELER & CO.

MILWAUKEE, *June* 13, 1855.

Hon. R. SAGE, *Troy, N. Y.*

DEAR SIR: Yours of the 7th inst. came duly to hand. The bill with instructions I handed over to F. & L., they will make the answer and forward to you for execution. The bill filed by Sweet's creditors, I see, is nothing but a rehash of the former ones, which points, in the main, the court has passed upon and adversely to Sweet and his creditors upon the bill you filed.

Yours, truly,

C. H. WHEELER.

214 MILWAUKEE, *Sept.* 4, 1855.

Hon. R. SAGE, *Troy, N. Y.*

DEAR SIR: No letters to-day. I find the circuit court for chancery business commences the third Monday of this month. You had better try and be here the early part of the term and have, if possible, such arraingments as will get a decree, and have a sale of the property in December, as money at that time, in this place, is always the closest.

Yours, truly,

C. H. WHEELER.

MILWAUKEE, *Sept.* 5, 1855.

Hon. R. SAGE, *Troy, N. Y.*

DEAR SIR: No letters to-day. Emmons says that some party has purchased some judgments *vs.* Sweet, in Boston, paying almost full price. Hope to see you here last next week.

Yours, truly,

WHEELER & CO.

MILWAUKEE, *Sept.* 10, 1855.

Hon. R. SAGE, *Troy, N. Y.*

DEAR SIR: Yours of the 7th inst. are at hand. In regard to your coming out I think you had better come at once, for, in case you have no defence in the case, you can get a decree any day during the term by making the motion.

Very truly yours,

WHEELER & CO.

MILWAUKEE, *Sept.* 11, 1855.

Hon. R. SAGE, *Troy, N. Y.*

DEAR SIR: No letters to-day. I have had a conversation with Mitchell in regard to your coming out here and think, as I wrote you yesterday, that you had better come at once.

Yours, truly,

WHEELER & CO.

215 MILWAUKEE, *Sept.* 20*th*, 1855.

Hon. R. SAGE.

DEAR SIR: We have no letters to-day, but instead the hon. was duly received. Mr. Slocum is expected to-night.

Yours, truly,

WHEELER & CO.

MILWAUKEE, *Oct.* 8, 1855.

Hon. R. SAGE.

DEAR SIR: Your several favors of two of the 3d, 4th, 5th, are at hand and carefully noted. Mr. Place will make up ac. charges adding 12 p. c. interest against warehouse to-morrow, ending first Sept. He says Mr. Sage was to send abstracts of your warehouse ac. before we made up here, as you have such an ac. and we have not, and we would have to run through the books for four years unless we have yours to go by. However, he is to make up from F. & Lynde bills, which we have rendered them from time to time, and if we fail in getting our charges in yours, add them.

Yours, truly,

WHEELER & CO.

MILWAUKEE, *Oct.* 9, 1855.

Hon. R. SAGE.

DEAR SIR: Yours of the 5th inst. is received—carefully noted. Nothing new in regard to the warehouse property. Sweet has not been heard from. Finch has got back—said he had an appointment with Emmons—would advise me the result. I said to him we would, I thought, allow $2,000 rent if they would allow us to take a decree, with 12 p. c. int. for our charges.

Yours, truly,

WHEELER & CO.

216 MILWAUKEE, *Oct.* 13, 1855.

Hon. R. SAGE.

DEAR SIR: Your several favors of 8, 9, 10th, are at hand, carefully noted. The enclosure, after perusing contents, was delivered to F. & L. F. went immediately to see Emmons; have not heard the result of the interview. We will make up the ac. vs. the warehouse property on Monday, and hand into Finch.

Yours, truly,

WHEELER & CO.

MILWAUKEE, *Oct.* 27, 1855.

Hon. R. SAGE.

DEAR SIR: Yours of the 24th is at hand. Mr. Mitchell says Emmons has written you to come out; and we expect you will come, as you know the importance of getting a decree this term court. Finch says the court can't make laws, and has no right to hear testimony as regards rent of property; but this, what were the storeage earnings over expenses? And Sweet has according to contract a share, which, if any, might go to liquidate a part of mortgage.

Yours, very truly,

WHEELER & CO.

MILWAUKEE, *Oct.* 29, 1855.

Hon. R. SAGE.

DEAR SIR: Your favor of 25 in't, from New York, and your telegraph are received. "Would not pay over twelve fifty. Cannot come before ninetenth." Your not coming out at once, or during this sitting of court, will result in not getting a decree this fall, as you are the only party that can make these little arraingments necessary in order to get the decree as planed for. I have just re-
217 turned from Emmons's office. He says, if you will write him the time you will be here, he will so arrainge with the court to have a sitting while you are here, so I think will still be all right, and we shall have decree this fall.

C. H. WHEELER.

MILWAUKEE, *Nov.* 8, 1855.

Hon. R. SAGE.

DEAR SIR: Your favor, 4th, is received. I have seen Mr. Mitchell, also Lynde, and they both deem it important and necessary to get a final of the warehouse case that you come to Milwaukee; therefore we have telegraphed you as follows: "Come. Milwaukee. Court sits Monday—come, can have decree." Sweet has arrived, and all parties will be present, and we see no difficulty in getting decree.

Yours, truly,

WHEELER & CO.

MILWAUKEE, *Jan'y* 4, 1856.

Hon. R. SAGE.

DEAR SIR: Your favor, 28th, from W., is received and carefully noted. I have seen F. and L., and Mr. Mitchell, and the sale is postponed for one week from the 5th, which stands adjourned to Saturday, 12th instant.

Yours, truly,

WHEELER & CO.

MILWAUKEE, *Jan'y* 19, 1856.

Hon. R. SAGE.

DEAR SIR: Your favor, 10th, is at hand. I would like you to come out to attend the sale as soon as you possibly can, as I am of the

1053

opinion (if you think or wish to get the property) that we will have to pay more by delay. Can't you pair off with some one long
218 enough to come out?

Yours, truly,

WHEELER & CO.

MILWAUKEE, *Jan.* 26, 1856.

Hon. R. SAGE.

No letters. The sale is adjourned for one week, Saturday, February 2d, at which time I hope you will be able to get here.

Mr. Mitchell leaves town about middle Feb. to meet his lady from Scotland, and will be absent month or more, so you will see the importance of getting this sale disposed of, at least, before the middle Febr'y.

Yours, truly,

WHEELER & Co.

MILWAUKEE, *Jan'y* 30, 1856.

Hon. R. SAGE.

DEAR SIR: Your two favors, 23d, 24th, are received. We will have the sale adjourned to Saturday, 16th Febr'y, at 2 o'cl'k p. m., at which time it will be important that you be here, as Mr. Mitchell will leave immediately after, and he has promised to wait until 16th, but no longer.

Yours, truly,

WHEELER & Co.

TROY, *Oct.* 15, 1855.

Hon. R. SAGE.

DEAR SIR: Your favor of the 12th is received, and carefully noted. Enclosed please find duplicate bill charges on warehouse property. I have given F. & Lynde one, and I think everything is in that should be, and we have the vouchers, in't cast at 12 per cent. It now looks as if their was good prospects of getting decree this term court.

Truly yours,

WHEELER & Co.

219 MILWAUKEE, *Nov.* 8, 1855.

Hon. R. SAGE.

DEAR SIR: Your favors of 3d, 6th, 7th, and 8th are at hand, and carefully noted. Your dispatch came to hand Saturday, stating you would be here 15th, and to notify Emmons what we have done. He says he will arrainge it, so it will make no difference.

Yours, very truly,

WHEELER & Co.

MILWAUKEE, *May* 24, 1855.

Hon. R. SAGE, *Troy, N. Y.*

DEAR SIR: Finch says it is entirely against his views to have your warehouse case go over this term of court. He thinks he can get a

hearing if you had not ordered it to be put off; and, in my opinion, it is fatal to our getting the property. The court sits all next week, and I hope you will come out and try and get a decree. If you could get it, you then would have everything your own way. I know the court is for having it disposed this term; also Mr. Butters is waiting for you, and expecting you to finish up the renting of house. Come out, if possible, and try to fix up matters.

Yours, truly,

WHEELER & Co.

220 *Testimony for defendant.—Judgments against Alanson Sweet.*

Sept., 1849.	.....	.....circuit	38 00
March, 1850.	Tweedy & Crocker	.....do.....	87 18
April, 1850.	Alex. Mitchell	.....do.....	14,208 47
May, 1850.	Levi Blossom	....do.....	15,196 25
do do	Elisha W. Edgerton	.....do..	4,837 36
June, do	Calvin W. Howe	.....do.....	338 79
July, do	Erastus Fairbanks, et al., U. S	.....	1,026 57
do do	Rogers Catlin, et al	.....do.....	1,297 18
do do	Alex. Mitchell, circuit	.....	4,347 57
do do	Holbrook, Carter & Co., U. S	.....	3,292 61
do do	Danforth, Sias & Co.	.....do.....	1,721 52
do do	Alfred Edwards & Co., cir. court	.....	134 37
do do	Danforth, Sias & Co	....	490 52
Sept. do	Levi Blossom, circuit	.....	10,203 49
do do	Holiday, Brown & Ogden, co. court	.....	219 06
do do	Geo. Williard & Step. B. Wells	...do.....	342 57
Oct. do	Lorenz Sterling, et al	.....do.....	398 91
do do	Wm. McCally, et al	.....do.....	188 13
Nov. do	Meeker & Herbert, circuit	.....	104 69
do do	Vecht & Birgh, U. S	.....	1,798 69
do do	W. P. Young, et al., co. court	.....	134 44
Dec. do	Leroy M. Wiley, et al., U. S	.....	1,142 36
Jan., 1851.	Holbrook, Carter & Co., U. S	.....	5,627 30
do do	Lorenz Fisk, et al., U. S	....	1,373 08
Feb., 1852.	Erastus Corning, et al., co. court	.....	272 11
March, do	Dean Richmond, circuit	.....	5,392 36
Aug. do	Albert J. Shaw, co. court	.....	30 95
Jan., 1853.	Erastus Corning et al., circuit	.....	508 73
Feb., 1854.	Levi Blossom, circuit	....	1,441 50
do do	do	....	1,442 27
Sept. do	Daniel H. Chandler, co. court	.....	516 74
			$78,153 77

221 *Deposition of Alanson Cary.*

UNITED STATES OF AMERICA,
Northern District of New York,
City and County of Albany, ss:

Be it remembered that on this thirteenth day of July, in the year of our Lord one thousand eight hundred and sixty-one, I, Robert J. Hilton, a commissioner duly appointed by the circuit court of the United States for the northern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act, in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me at my office, at No. 74 on State street, in the city of Albany, in the northern district of New York, in the State aforesaid, Alanson Carey, a resident of city of Troy, and State of New York, to testify and the truth to say, on the part and behalf of the defendant in a certain suit or matter of controversy now depending and undetermined in the district court of the United States for the ——— district of Wisconsin, in equity, wherein Charles H. Wheeler is complainant and Russell Sage defendant, and the said Alanson Cary being about the age of forty years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of con-
222 troversy aforesaid, I did carefully examine, and he did thereupon depose, testify, and say as follows, viz:

I am a resident of the city of Troy, in the State of New York, and am by occupation an accountant, and have been for now nearly four years a receiver of the New York Central Railroad Company at the city of Troy, N. Y. From February, A. D. 1853, until September, A. D. 1857, I had charge of the books and acounts of the firm of R. Sage & Co., at the city of Troy, N. Y., as the clerk and accountant of said firm during that period of time. That firm, until the first day of September, A. D. 1854, consisted of the above-named defendant, Russel Sage, and Charles H. Wheeler, the above-named complainant, and Hiram Slocum. After said first day of September, A. D. 1854, said firm consisted of said Russel Sage and said Charles H. Wheeler. The firm business in which said Hiram Slocum was interested was not closed until some time, a year or so, after A. D. 1854, and I continued to keep the accounts of that business as before, and the books of said old firm, and in which their accounts were kept in and during the whole year 1855, in the office of the said Russel Sage, in the city of Troy, N. Y., and during that same year (1855) the said Hiram Slocum's office was kept in the same building and adjoining the office of the said Russell Sage, and communicating with it by means of a door between, and Slocum had during that year free access

to the books and accounts to said old firm. I have within the last two days, yesterday, examined the said account books of the said old firm of Russell, Sage & Co. From the first day of February, A. D. 1855, to the first day of August, A. D. 1855, there was at all times a balance against the said Hiram Slocum on said books of said firm of more $7,500, over and above all credits. I am not
223 able to state what was the exact condition of said Charles H. Wheeler's accounts with said firm during the said A. D. 1855, and the reason is that said Wheeler was transacting some business for said firm at Milwaukee, Wisconsin, and his personal account was kept on the books there, although their principal place of business was in the city of Troy, N. Y., and the balance sheet from the Milwaukee office was only transmitted once a year, and during the entire period of my clerkship for said firm the said Russell Sage was generally largely in advance to said firm—I mean from February, A. D. 1853, until September, 1857, and furnished the capital for said firm and on which their business was transacted.

Taken, subscribed and sworn to before me, Alanson Cary, this 30th day of July, A. D. 1861.

R. J. HILTON,
United States commissioner for northern district of New York—2d court.

UNITED STATES OF AMERICA,
Northern district of New York, Albany county and city, ss:

I, Robert J. Hilton, a commissioner, duly appointed by the circuit court of the United States for the northern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in ad-
224 dition to an act entitled an act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed March 1st 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, that the witness, Alanson Cary, lives in, and is a resident of the city of Troy, in the State of New York, and is at a greater distance from the place of trial of the said action than one hundred miles. I further certify that no notification of the time and place of taking the said deposition signed by me was made out and served on the opposite party or his attorney, or either of them, to be present at the taking of the deposition and to put interrogatories, if he or they might think fit, because the said adverse party does not reside within one hundred miles of the place of taking said deposition, nor has the said adverse party any agent or attorney known to me within that distance.

I further certify that on the thirteenth day of July, A. D. 1861, I was attended by Russell Sage, the defendant, and by the aforesaid witness, who was and is of sound mind and lawful age, and the wit-

ness was by me first carefully examined and cautioned and sworn to testify the whole truth, and the deposition was by me reduced to writing in the presence of the witness and from his statements, and after carefully reading the same to the witness he subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of transmitting the same under seal
225 and returning the same by mail to the court for which the same is taken.

And I do further certify that I am not of counsel nor attorney for either of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in the said caption.

In testimony whereof I have hereunto set my hand and seal, this thirteenth July, in year of our Lord one thousand eight hundred and sixty-one, and of the independence of the United States the eighty-sixth.

R. J. HILTON, [SEAL.]
United States commissioner, circuit court of the United States for the northern district of New York, in second circuit.

Commi's fees	$5 00
Witness fees, all, 60c., $1 50	2 10
Paid by N. H.	$7 10

R. J. HILTON,
Commissioner.

226 In the district court of the United States for the district of Wisconsin.

The joint and several answer of Alanson Sweet, Levi Blossom, and the Milwaukee and Janesville Plank Road Company, by Levi Blossom, president of the said company, three of the defendants to the bill of complaint of Isaac Danforth, William Siers, James H. Danforth, Charles J. Davis, and several other complainants.

These defendants now and at all times hereafter, saving and reserving to themselves all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainants' said bill of complaint contained for answer thereto, or unto so much and such parts thereof as these defendants are advised is material for them to make answer unto, each answering for himself, and not one for the other, jointly and severally answer; and the said Sweet for himself admits that, according to the best of his recollection and belief, the complainants in said bill of complaint did recover, in manner and form as in said bill set forth, the several judgments mentioned therein, at the time and for the amounts respectively stated, and that executions were issued and directed and made returnable, and were afterwards returned with the endorsements thereon, as in said bill stated, and that there is equitably due to the said plaintiffs in said several judgments the respective amounts mentioned in said bill from the defendants to said several judgments.

And the said Alanson Sweet, for himself further answering, admits it to be true that the said Sweet and Allen Johnson were part-
227 ners in trade, at and for about the time in said bill mentioned; and this defendant states that the business of said partnership was conducted by the said Johnson, who was the active member of said firm, and to whom was confided almost exclusively the business of said partnership. That the stock in trade of said firm was sold and disposed of to Shepard, Bonnell & Williams, of the city of Milwaukee, and that of the avails thereof there is remaining a memorandum for the payment of the sum of five thousand dollars, executed by the said Shepard, Bonnell and Williams, in the form of a receipt, which was transferred to the defendant, Levi Blossom, in the manner and for the purpose hereinafter mentioned, and the residue of the avails and assets of said partnership, before the filing of this bill, were disposed of and passed under the management and direction of the said Johnson, and have been by him applied, as this defendant is informed, and believes to be true to some extent or in whole, towards the payment of indebtedness of said firm, or in expenses incurred in relation thereto, but whether in whole or in part, or to what extent the same have been so applied, or how much remains unapplied or unpaid thereof, or from whom in particular, or in what amount, or what has been the particular application thereof, or what was the condition thereof at the time of filing said bill of complaint, or what is the present situation of the same, this defendant has not the means of information, and cannot state upon knowledge or belief. And this defendant, the said Alanson Sweet, for himself further answering, admits it to be true that previous
228 to said co-partnership business of the said Johnson and this defendant, he, the said defendant, had been extensively engaged in the forwarding and commission business at the city of Milwaukee; but this defendant states the fact to be that such business was designed to be conducted wholly for cash, and for the most part was so conducted; but that in some instances credit was allowed upon short time, and was either paid promptly or nearly so, or became uncollectable and worthless. And this defendant states that he has not any knowledge of, and to the best of his belief there are no bills, notes, or other evidences of indebtedness arising from said business, and was not, at the time of the filing of this bill of complaint, belonging to this defendant, of any value whatever, but on the contrary thereof, this defendant states the truth to be that this defendant availed himself with all possible diligence and earnestness to reduce all and every indebtedness, due and owing to him, to cash, or to such form as that he could apply the same towards the indebtedness of this defendant, and applied the same to such purpose, and to maintain his credit continued so to do at great sacrifice, until it became impossible for him longer to meet his engagements punctually; and this defendant was sued and finally ruined in his credit.

And this defendant, further answering, states it to be true, that at the time he became embarrassed, as aforesaid, he was possessed of a large real estate in the city of Milwaukee and at Madison, the title whereof was of record in the proper offices, and which real estate this

defendant was, at the time of his embarrassment, unable to dispose of without too great prejudice to the interest of his creditors.
229 And this defendant believes that all and singular the same hitherto has and still remains undisposed of, and not otherwise encumbered than as hereinafter mentioned. And this defendant denies that he has, or at any time heretofore has had, to the best of his remembrance or belief, any real estate other than such as the title thereof of this defendant appears truly of record in the proper offices for the record thereof in the counties aforesaid.

And this defendant, further answering for himself, denies that the said Johnson and this defendant have, or at any time have had, any real estate, or chattels, real or personal, or property therein in partnership, or as tenants in common, to the knowledge or belief of this defendant. And this defendant, further answering, denies that he has any real estate or chattels, real in his own right, other than as hereinbefore mentioned; and that, to the best of his knowledge and belief, he has never jointly with, or as co-tenant with any other person or persons whomsoever, and has not had at any time since his embarrassment as aforesaid, or the recovery of the judgments, or either of them in said bill mentioned.

And this defendant, further answering for himself, denies that he has, to the best of his knowledge and belief, any personal property, bills, notes, money, or other thing of any kind or description, except as in this answer of this defendant particularly mentioned, not exempt from levy and sale upon execution by the laws of this State, unless such there be of the partnership property of this defendant and the said Johnson, and of such he knows of none, and concerning
230 which this defendant cannot state further than he has hereinbefore answered. And that all the statements in the said bill to the contrary thereof this defendant believes to be wholly untrue.

And this defendant, further answering for himself, states that he believes it to be true that Alexander Mitchell purchased, or advanced the money to purchase, the property in said bill mentioned at Barley's harbor, and that this defendant believes it to be true that the said Mitchell took the conveyance thereof in his own name and holds the title thereto, but whether absolutely or upon some condition or trust this defendant does not know and cannot state, but that the said Mitchell advanced the money to make such purchase for, or that he holds the same upon any trust for this defendant, or upon any trust stated in said bill, is not known to this defendant, and to the best of his belief, is wholly untrue; but that this defendant improved said premises by labor done thereon and money expended, this defendant states is true; but that such money belonged to this defendant, or that said improvement was made for his benefit, or that this defendant was or is to derive any benefit from said premises or has any interest therein or in the improvements thereof, is entirely without any knowledge of this defendant, and according to his best belief, is in nowise true; and this deponent denies all knowledge or information of said property being held upon any trust for his use or benefit, immediate or remote, or that it was intended so to be, or upon any trust in said bill stated or otherwise, for the use of this defendant or any

member of his family or other person, whereby this defendant
231 is in anywise to der ve any benefit.

And these defendants, the said Alanson Sweet and the Milwaukee and Janesville Plank Road Company, deny that the said Sweet had stock paid in said company in the sum of fifteen thousand dollars, but these defendants do admit that the stock paid in and that belonged to said Sweet was in about the sum of between six and seven thousand dollars.

And this defendant, the said company, directs that the stock subscribed by the said Sweet in said company was declared by a resolution of said company to be forfeited, but this defendant denies that such forfeiture was declared for the purpose of forfeiting said stock in fact, but solely to induce the payment towards said stock on the part of said Sweet, as was also the stock of other delinquent subscribers, and that it was not so declared in the case of said Sweet for any unjust or inequitable purpose whatever, but solely for the purpose of, and as a means to induce payment upon the stock subscription of the said Sweet, as the same, according to his subscription, ought to have been paid, and not otherwise.

And these defendants, the said Sweet and the said company, and the said Levi Blossom answering, say, that the said defendant Blossom, did purchase of the said Sweet stock in said company belonging to said Sweet, in the sum of six thousand two hundred and fourteen dollars and ninety-eight cents, and that the said Blossom paid him, the said Sweet, the same amount therefor, which was the full market value thereof, and the same stock hereinbefore mentioned to have been declared forfeited, and these defendants deny wholly that said stock was purchased for the purpose in said bill stated, or that
232 the same was not fully paid for, or that the same is held by said company for the benefit of said Sweet or any member of his family, or to cover up said stock, but on the contrary thereof these defendants say that the said Sweet received the full market value thereof and that the same was purchased by said Blossom for a valuable consideration, and is justly and fairly the property of the said Blossom, and not of the said Sweet. But these defendants, the said Levi Blossom, and the said Co., and the said Sweet, admit that of the stock of the said Sweet in said company there remained belonging to said Sweet two and a half shares, being fifty dollars of stock, and that said Sweet continues the owner thereof.

And this defendant, the said Sweet, denies that he sold, and the defendant, Blossom, denies that he purchased said stock mentioned to have been sold by said Sweet, to enable the said Sweet to place the property of said Sweet beyond the reach of his, the said Sweet's creditors, or in anywise to hinder or defraud such creditors out of their debts.

And the said defendants, Alanson Sweet and Levi Blossom, answering, admit it to be true that the said Sweet made his certain promissory notes, in the amount in said bill mentioned, at about the time and payable, and accompanied by a warrant of attorney by which judgments were entered up for the amounts, or thereabouts, at the time and in the court in said bill stated, and form a lien upon the real estate

of the said Sweet in the county of Milwaukee, and that writs
233 of fieri facias were issued thereupon to the sheriff of the county of Milwaukee, by virtue of which the lots and real estate, described in the certificate of sale in said bill referred to, were sold and bid off by the said Blossom for the prices specified in such certificate. But these defendants deny that the said promissory notes, and the judgments thereupon entered, were without any good or valuable consideration or for the purpose alleged in said bill, but, on the contrary thereof, these defendants state that the said notes were given by the said Sweet for a just indebtedness of the said Sweet to the said Blossom for moneys advanced to and paid out by the said Blossom for the said Sweet, and the interest accrued on such indebtedness. And these defendants deny that the said judgments were entered by or under the arrangement stated in said bill, or any fraudulent or dishonest arrangement whatever, but, on the contrary, for the purpose of securing the said indebtedness to the said Blossom; and that said notes and said judgments and the proceedings had thereon in the sale and purchase of the said real estate have been and are in all respects fair; and that in the giving of said notes, and entering of said judgments, and purchase of said real estate, there has been no intention on the part of either these defendants, the said Blossom or the said Sweet, to defraud, hinder, or delay, or in anywise dishonestly or corruptly affect the other creditors of the said Sweet, and every allegation of the kind, in said bill contained, is wholly untrue; and that no part of the judgments for which the real estate was bid of by defendant, Blossom, as hereinbefore stated, has been in any otherwise paid than
234 by the purchase of the real estate in the said certificate in said bill of complaint referred to, and that such certificate is a just and fair claim in favor of this defendant, the said Levi Blossom.

And the said Levi Blossom and Alanson Sweet admit it to be true, that subsequent to the entry of said judgments the said Alanson Sweet assigned a contract with the government for building a light-house at Barley's Harbor, as security to him, the said Levi, for advances to be made by him, said Levi, to said Sweet, to enable the said Sweet to perform such contract on his part; but these defendants deny that the said Alanson has assigned to the said Blossom any other promissory notes, bills, bonds, or other securities or evidences of debt of any kind to the knowledge, recollection, or belief of these defendants, for the purpose of securing the payment of said promissory notes of the said Sweet, upon which judgment was entered, or that said Blossom is in possesion of any bonds, bills, notes or other securities belonging to the said Sweet, otherwise than as in this answer stated.

And these defendants deny that said Blossom has any real or personal property belonging to said Sweet, or held for him, or his use, or that of his family, or for any other person for him, or to place the same beyond the reach of his creditors.

And these defendants, further answering, admit it to be true that the said Sweet assigned to the said Blossom a claim or claims against Shepard, Bonnell & Williams, of the city of Milwaukee, for about four or five thousand dollars, which were afterwards exchanged to

the said Sweet for an obligation of U. H. Persons. That
235 afterwards the said Sweet and the said U. H. Persons desired the said Blossom to exchange the said obligation of the said Persons for a claim against the said Shepard, Bonnell and Williams; and this defendant, the said Blossom, believing said demands to be equal security, consented so to do, and made the exchange accordingly. And this defendant, the said Levi, saith, and the said Alanson believes it to be true, that the said Blossom now holds the said obligation of the said Shepard, Bonnell and Williams subject to the equities existing thereon between the parties thereto and said Alanson, together with a promissory note of D. C. Reed for about four thousand dollars, and one other note of the said Reed for about seven thousand, and a mortgage on a vessel for about twenty-four hundred dollars, as collateral security for the indebtedness, aforesaid, of the said Sweet to this defendant, the said Blossom.

And the said Alanson Sweet for himself, further answering, denies that he has, to the best of his knowledge and belief, any real or personal estate, other than he has hereinbefore set forth in this his answer to the said complainant's bill of complaint, and such as is exempt as aforesaid.

And this defendant, Levi Blossom, further answering, states that the money hereinbefore mentioned, which he advanced to the said Sweet, was the acquisitions of the variety of business and transactions in which this defendant had been engaged for a period of years previous, and such as he, the said defendant, was enabled to command,
but how much was the result of any particular transaction
236 this defendant has no means of determining particularly, and cannot state. This defendant, further answering to that part of the complainant bill which requires him to state, among other things, whether, at about the time he advanced money to said Sweet, he did not borrow money for his own use, says that he does not now recollect, but this defendant believes it to be more likely than not that he did; but if by said bill it is intended that this defendant had not advanced the amount of promissory notes to the said Sweet, and, on the contrary thereof, borrowed money for his own necessities or to meet his own obligations, then this defendant denies the same, and states that if he did borrow money it was by reason of advances and loans made by this defendant to the said Sweet and others, and that except for such advances and loans this defendant would have been possessed of a large cash capital, beyond what was required for his own business (not inclusive of loaning money,) and that this defendant then was, and from thence hitherto has been, and is now, worth not less than fifty thousand dollars, and this defendant believes a much larger amount.

And these defendants deny all unlawful combination and confederacy in the said bill charged, without that, any other matter or thing material or necessary for these defendants to make answer unto and not herein or hereby well or sufficiently answered unto, confessed or avoided, traversed or denied, is true to the knowledge or belief of these defendants.

All of which matters and things these defendants are ready

237 to aver, maintain, and prove, as this honorable court shall direct, and humbly pray to be hence dismissed with the reasonable costs and charges in that behalf most wrongfully sustained.

ALANSON SWEET.
L. BLOSSOM.

C. K. WATKINS,
Sol'r, and of Counsel.

DISTRICT OF WISCONSIN, *ss:*

On this 28th day of June, A. D. 1853, personally appeared before me Alanson Sweet and Levi Blossom, above named, and severally made oath that they had heard the above bill by them subscribed, read, and know the contents thereof; and that the same is true of their own knowledge and belief, except as to those matters which are therein stated to be on their information or belief, and as to those matters they believe it to be true.

H. N. WELLS,
County Judge, Mil. Co., Wis.

238 And at the hearing of said cause the following motions, stipulations, and objections were filed:

Motion.

District court of the United States, district of Wisconsin.—In equity.

CHARLES H. WHEELER
v.
RUSSELL SAGE.

And now, on this twenty-third day of September, A. D. 1861, comes the defendant, Russell Sage, and moves to suppress the deposition of *Alexander Mitchell*, the deposition taken on behalf of complainant, for the reasons—

1st. Those disclosed in objections urged at the time of the examination of said Mitchell.

2nd. Because the evidence seeks to establish an interest in real estate by parol testimony, where it can be done only by writing signed by the party to be charged.

EMMONS, VANDYKE & HAMILTON,
Sol'rs for Comp't.

Motion.

District court of the United States, district of Wisconsin.—In equity.

CHARLES H. WHEELER
v.
RUSSELL SAGE.

And now comes the said defendant, Russell Sage, by his solicitors, Emmons, Vandyke & Hamilton, and moves the court that the depositions of *Duncan C. Reed and Alanson Sweet*, taken herein on behalf of the complainant, be suppressed, and shows the reasons following:

The deposition of the said Duncan C. Reed should be suppressed, because—

1st. The evidence by him given is immaterial and incompetent.

239 2d. Because of the contumacy of the said Reed, in refusing to answer questions propounded to him by defendant's counsel.

3rd. Because of the contumacy of said Reed in refusing to produce the written memoranda, the contents of which he had testified to.

4. Because the deposition of said Reed is otherwise informal and irregular.

And the said deposition of *Alanson Sweet*, which was taken on commission upon written interrogatories before Francis Bloodgood, esquire, a commissioner, should be suppressed, because—

1st. The answers given by the said Sweet, and the answers thereby sought, are all incompetent and immaterial.

2d. Because of the contumacy of the said Sweet in refusing to answer the interrogatories propounded by the defendant's counsel.

3d. Because it is apparent that the said Sweet had exhibited to him, by the complainant or his counsel, the interrogatories upon which he was to be examined, and prior to his examination thereupon.

4th. Because the said Sweet had, by himself or the complainant, prepared in writing his answers to said interrogatories.

5th. Because it appears that in refusing to answer questions propounded by defendant's counsel, the said Sweet acted upon the direction of complainant and his counsel, and because no sufficient reason is given for such refusal.

6th. Because the deposition of said Sweet is in other re-

240 spects informal and irregular, and inadmissible by the rules and practice of the court.

EMMONS, VANDYKE & HAMILTON.
Sol'rs for Defendant.

Stipulation.

District court United States, district of Wisconsin.—In equity.

CHARLES H. WHEELER
v.
RUSSELL SAGE.

The defendant, Russell Sage, waives and withdraws from his motion to suppress the deposition of Alanson Sweet. The reason urged, that Sweet was contumacious in refusing to answer certain interrogatories propounded by defendant's counsel; consenting that Sweet may now, in open court and on the hearing, answer said interrogatories, it being understood that Sweet need not be called as a witness unless the judge of the court shall decide the cross-interrogatories relevant and material, the counsel for the plaintiff agreeing to produce Sweet for that purpose.

EMMONS, VAN DYKE & HAMILTON,
Sol'rs for Sage.
FINCHES, LYNDE & MILLER,
Sol'rs for Def'ts.

SEPT. 23, 1861.

1093

Stipulation.

In dist. court.— In equity.

CHARLES H. WHEELER
v.
RUSSELL SAGE.

It is hereby stipulated by the defendant that so much of the motion to suppress the testimony of Alanson Sweet as relates to the refusal of said Sweet to answer certain questions is hereby expressly withdrawn and waived, so far as it is a ground of a motion to suppress.

EMMONS, VAN DYKE & HAMILTON,
Sol'rs for Defendants.

Dated Oct. 8, 1861.

241 *Objection to evidence.*

District court of the U. S. for the dist. of Wisconsin.

CHARLES H. WHEELER
v.
RUSSELL SAGE.

1st. The defendant objects to the letter from Mitchell to Emmons as being the mere declaration of a third person who was a witness for the complainant.

2d. The defendant objects to all this testimony in the cause, as being an attempt to create an equitable estate in land by parol, and therefore it is inadmissable under the statute.

3d. The defendant objects to all answers in the deposition of Sweet to questions objected to by him, and for the reasons stated by them before taking of the deposition and now on file in this cause, and moves for that reason to suppress such answers.

4th. The defendant objects to all answers in the deposition of Reed, Slocum & Mitchell, which are stated in the depositions to have been objected to by the defendant, and for the reasons therein stated, and moves to suppress the same.

And now, on the hearing of this cause, the objections aforesaid were renewed and urged to the court, and moved and asked to exclude the said evidence for the reasons aforesaid.

EMMONS, VAN DYKE & HAMILTON,
Sol'rs for Def'nt.

242 And now, at this same term, to wit, September term, A. D. 1861, and on the eighteenth day thereof, to wit, on the twenty-ninth day of October, A. D. 1861, the following proceedings were had, to wit:

Decree.

CHARLES H. WHEELER
v.
RUSSELL SAGE. } In equity.

This day came the parties, by their counsel, and on consideration of the pleadings and proofs, and the arguments of the counsel, it is thereupon ordered, adjudged, and decreed by the court that this bill be, and hereby is, dismissed, and that the complainant pay the costs of this suit to be taxed.

A. G. MILLER.

Prayer for appeal.

November 12, 1861.—This day came the complainant, and prayed an appeal to the Supreme Court of the United States, and filed his bond for an appeal with John S. Harris, his surety, in the penalty of one thousand dollars, conditioned to prosecute said appeal to effect, and answer all damages and costs if he fail to make his appeal good, which bond is approved. Whereupon it is ordered by the court that the said appeal be, and hereby is, allowed, and that a citation be issued. Citation issued.

Which said *bond for appeal* is as follows:

Appeal bond.

District court of the United States.

CHARLES H. WHEELER
vs.
RUSSELL SAGE.

243 Know all men by these presents that we, Charles H. Wheeler and John S. Harris, are held and firmly bound unto the above-named Russell Sage in the sum of one thousand dollars, to be paid to the said Russell Sage, his executors, or administrators; to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this 11th day of November, A. D. 1861.

Whereas the above-named appellant has prosecuted an appeal to the Supreme of the United States, at the city of Washington, in the District of Columbia, to reverse the decree rendered in the above suit by the district court of the United States for the district of Wisconsin:

Now, therefore, the condition of this obligation is such, that if the above-named appellant shall prosecute his appeal to effect, and answer all damages and costs if he fails to make his appeal good, then this obligation shall be void; otherwise the same shall remain in full force and virtue.

CHARLES H. WHEELER. [SEAL.]
JOHN S. HARRIS. [SEAL.]

Sealed and delivered, taken and acknowledged, before me this 11th day of November, A. D. 1861.

J. M. MILLER, *Clerk.*

UNITED STATES OF AMERICA,
District of Wisconsin, ss:

244 John S. Harris, being duly sworn, deposes and says that he is worth the sum of two thousand dollars over and above all his just debts and liabilities.

JOHN S. HARRIS.

Sworn to before me this 11th day of November, 1861.

J. M. MILLER, *Clerk.*

November 12, 1861. Approved by the court.

A. G. MILLER.

245 UNITED STATES OF AMERICA,
District of Wisconsin, ss:

I, John M. Miller, clerk of the district court of the United States of America for the district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals now on file and remaining of record in my office, being a full and complete exemplification of the record in the suit of Charles H. Wheeler against Russell Sage.

In testimony whereof, I have hereunto set my hand and [SEAL.] duly affixed the seal of the said court, at the city of Milwaukee, in the said district of Wisconsin, this seventh day of June, in the year of our lord one thousand eight hundred and sixty-two, and of the independence of the said United States the eighty-sixth.

J. M. MILLER, *Clerk.*

246 United States of America to Russell Sage, greeting:

Your are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to an appeal filed in the clerk's office of the district court of the United States for the district of Wisconsin, wherein Charles H. Wheeler is appellant and you are appellee, to show cause, if any there be, why the decree in the said appeal mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court of the United States, this twelfth day of November, in the year of our lord one thousand eight hundred and sixty-one, and our independence the eighty-sixth.

A. G. MILLER,
Judge of the District Court of the United States for the Wisconsin District.

Served on the within-named Russel Sage by showing this citation to N. J. Emmons, of the firm of Emmons, Van Dyke & Hamilton, his solicitors, and delivering him a copy thereof, this 15th day of November, 1861.

D. C. JACKSON, *Marshal.*

Service	$2 00
Travel	06
Copy	30
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